PIER 1
SAN FRANCISCO, CA 94111

LICENSE TO USE PROPERTY

LICENSE NO. ____

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

FC PIER 70, LLC,

A DELAWARE LIMITED LIABILITY COMPANY

[PORTIONS OF PIER 70]

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

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EXHIBIT A LICENSE AREA

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License to Use Property

BASIC LICENSE INFORMATION

License Date:	
License Number:	
Port:	**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Port's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Licensee:	FC Pier 70, LLC a Delaware limited liability company
Licensee's Main Contact Person and Mailing Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Billing Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Emergency Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Insurance Contact and Address (not broker):	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Parking Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:

Contact Information for Licensee's Agent for Service of Process:	
License Area:	The License Area is located in the Pier 70 area of the City and County of San Francisco, as more particularly shown on *Exhibit A* attached hereto and made a part hereof, together.
Length of Term:	[__________]
Commencement Date:	[______________________]
Expiration Date:	
License Fee:	This License is entered into in furtherance of Licensee's obligations under the Disposition and Development Agreement by and between Port and Licensee, dated ________, 2018. In consideration thereof, there is no License Fee due hereunder.
Environmental Security:	Environmental Oversight Deposit of $10,000. **[Note: Additional security dependent on type of activity and location.]**
Permitted Activity:	The License Area shall be used solely for the permitted activities described in ***Exhibit B*** attached hereto, as may be updated from time to time and appended hereto, for the construction of Horizontal Improvements outside of the 28-Acre Site under the DDA, and for no other purpose.
Additional Prohibited Uses:	In addition to, and without limiting, the Prohibited Uses specified in Section 7 below, Licensee shall be prohibited from using the License Area for any of the following activities: (a) (b) Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.
Invasive Work:	Notwithstanding the foregoing, Licensee will provide Port prior written notice before it may enter the License Area to perform any Permitted Activity that involves invasive testing, excavation or construction ("**Invasive Work**"). Each written notice will identify the scope of Invasive Work, the anticipated date for commencement and the anticipated duration for the Invasive Work.

Cure Period where applicable:	-Five (5) days following notice for failure to pay any Fees and/or all other charges hereunder. -One (1) day following notice if the Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion. -Five (5) business days following notice if Licensee defaults in its obligation to maintain insurance under the provisions of Article 21 set forth in *Schedule 1* (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials). -For any other non-monetary default not described above, thirty (30) days, or, if such cure cannot reasonably be completed within such 30-day period, if Licensee does not commence such cure within such 30-day period, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.
Maintenance and Repair:	See Section 9.3
Utilities and Services:	See Sections 9.1 and 9.2
Location of Asbestos:	[If applicable, see *Schedule 3* attached hereto].
Workforce Development Plan and Prevailing Wages:	Licensee will comply with the Workforce Development Plan attached to the DDA and Master Lease and Section 13.3(f) (Prevailing Wages) of the Master Lease in connection with Licensee's performance in the License Area of the Permitted Activities as if such plan and section were incorporated into this License except that any reference in such plan or section, as applicable, to "Developer" or "Tenant" will mean Licensee and "Premises" or "Facility" will mean the License Area and "Project", or similar words will mean the Pier 70 Mixed-Use Project.
Prepared By:	[________________]

LICENSE TO USE PROPERTY

1. BASIC LICENSE INFORMATION.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as licensor, and the party identified in the Basic License Information as licensee ("**Licensee**"). The Basic License Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this "**License**." In the event of any conflict or inconsistency between the Basic License Information and the License provisions, the Basic License Information will control.

2. GRANT OF LICENSE.

2.1. *License*. In consideration of the stated conditions and agreements, Port hereby grants permission to Licensee to carry on the Permitted Activity within the License Area described in the Basic License Information and ***Exhibit A*** attached hereto.

2.2. *Encroachment*.

(a) If Licensee or its Agents or Invitees uses or occupies space outside the License Area without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Licensee shall immediately vacate such Encroachment Area and pay as an additional charge for each day Licensee used, occupied, uses or occupies such Encroachment Area, an amount equal to the square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Encroachment Area, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Licensee uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Licensee or its Agents or Invitees, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this License (including Licensee's obligation to Indemnify Port as set forth in this Section), at law or in equity.

(b) In addition, Licensee shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Licensee has failed to vacate the Encroachment Area, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Vacate, if applicable, delivered by Port to Licensee following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area, issuance of each Notice to Vacate and survey of the Encroachment Area. Licensee's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of Section 14 below (Indemnity and Exculpation) shall also apply to Licensee's and its Agents' and Invitees' use and occupancy of the Encroachment Area as if the License Area originally included the Encroachment Area, and Licensee shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Licensee in surrendering the

Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 2.2 and the reasonableness of the amount of the charges described in this Section 2.2.

3. TERM; REVOCABILITY.

This License is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the Commencement Date and expires on the Expiration Date specified in the Basic License Information ("**Term**") unless sooner terminated pursuant to the terms of this License.

The Parties acknowledge that Licensee is undertaking the Permitted Activities hereunder to fulfill its obligations under the DDA (which include obligations to construct Horizontal Improvements in accordance with the Schedule of Performance, as those terms are defined in the DDA. Therefore, Port will not revoke or terminate this License prior to the Expiration Date unless Licensee causes an uncured event of default hereunder or under the DDA that would otherwise permit a termination thereof.

Initials: ________
Licensee

4. FEES.

4.1. ***License Fee.*** As described in the Basic License Information, no License Fee is due hereunder. Any other sums payable by Licensee to Port hereunder shall be paid in cash or by good check to the Port and delivered to Port's address specified in the Basic License Information, or such other place as Port may designate in writing. All other sums payable by Licensee, including without limitation, any additional charges and late charges, are referred to collectively as "Fees."

4.2. ***Additional Charges.*** Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 21.3 (Tenant's Environmental Condition Notice Requirements) of the Master Lease as shown on ***Schedule 1*** (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials) attached hereto, 15.1 (SWPPP), 21.1(d) (CMD Form), or to provide evidence of the required insurance coverage described in Section 11 below (Insurance), then upon written notice from Port of such failure, Licensee shall pay an additional charge in the amount of Three Hundred Dollars ($300). In the event Licensee fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Licensee additional written notice requesting such document, then Licensee shall pay to Port an additional charge in the amount of Three Hundred Fifty Dollars ($350) for each additional written notice Port delivers to Licensee requesting such document. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

4.3. ***Late Charges/Habitual Late Payer.*** Licensee acknowledges that late payment by Licensee to Port of Fees or other sums due under this License will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Licensee fails to pay Fees on the date due, such failure shall be subject to a Late Charge at Port's discretion. Licensee shall also pay any costs including attorneys' fees incurred by Port by reason of Licensee's failure to timely pay Fees. Additionally, in the event Licensee is notified by Port that Licensee is considered to be a Habitual Late Payer, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Licensee's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Licensee.

4.4. ***Default Interest.*** Any Fees, if not paid within five (5) days following the due date and any other payment due under this License not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Licensee nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Licensee. Licensee shall also pay any costs, including attorneys' fees incurred by Port by reason of Licensee's failure to pay Fees or other amounts when due under this License.

4.5. ***Returned Checks.*** If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5. ENVIRONMENTAL OVERSIGHT DEPOSIT.

(a) Before the Commencement Date, Licensee must deliver to Port the Environmental Oversight Deposit in cash, in the sum specified in the Summary of Basic Information, as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Licensee's operations under this License; provided, however, that the Environmental Oversight Deposit will not be deemed an advance of any payment due to Port under this License, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

(b) Port may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("Environmental Notice") to Licensee and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Licensee has not begun to cure or comply with the Environmental Notice or is not working actively to cure the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, attorneys' fees, and collection and laboratory analysis of environmental samples.

(c) If an Environmental Notice is delivered to Licensee, and Licensee has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port may apply a maximum of $500 from the Environmental Oversight Deposit for each Environmental Notice delivered to Licensee to reimburse Port for its administrative costs.

(d) Licensee must pay to Port immediately upon demand a sum equal to any portion of the Environmental Oversight Deposit Port expends or applies.

(e) Provided that no Environmental Notices are then outstanding, Port will return the balance of the Environmental Oversight Deposit, if any, to Licensee within a reasonable time after the expiration or earlier termination of this License. Port's obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.

6. PERMITTED ACTIVITY; SUITABILITY OF LICENSE AREA.

The License Area shall be used and occupied only for the Permitted Activity specified in the Basic License Information and for no other purpose. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by Port. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By entering onto the License Area under this License, Licensee acknowledges [**Note: Add if applicable**: its receipt of ***Schedule 1*** regarding the presence of certain Hazardous Materials and] it shall be deemed to have inspected the License Area and accepted the License Area in its "**As Is**" condition and as being suitable for the conduct of Licensee's activity thereon.

7. PROHIBITED USES.

Licensee shall use the License Area solely for Permitted Activities and for no other purpose. Any other use in, on or around the License Area or surrounding or adjacent Port property shall be strictly prohibited, including, but not limited to, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) (each, a "**Prohibited Use**").

In the event Port determines after inspection of the License Area that a Prohibited Use or Prohibited Uses are occurring in, on or around the License Area, then Licensee shall immediately cease the Prohibited Use(s) and shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of written notice to Licensee to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) of the License Area that Licensee has not ceased the Prohibited Use, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Cease Prohibited Use delivered to Licensee. The parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area and Licensee's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 7 and the reasonableness of the amount of the charges described in this Section 7.

8. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.

8.1. ***Compliance with Laws***. Licensee, at Licensee's sole cost and expense, promptly shall comply with all Laws relating to or affecting Licensee's use or occupancy of the License Area.

8.2. ***Regulatory Approval*.** Licensee understands that Licensee's activity on the License Area may require Regulatory Approvals from Regulatory Agencies. Licensee shall be solely responsible for obtaining any such Regulatory Approvals, and Licensee shall not seek any Regulatory Approval without first obtaining the prior written approval of Port, not to be unreasonably withheld, subject to this Section 8.2. Port, at no cost to Port, will cooperate reasonably with Licensee in Licensee's efforts to obtain required Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with applicable Laws and to further terms and conditions of this License, including without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (i) encumber, restrict or adversely change the use of any Port property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions; or (ii) subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees to which Port may be subject). All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by the Port or would create obligations on the part of the Port (whether on or off of the License Area) to perform or observe, unless in each instance the Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for the fines and penalties. To the fullest extent permitted by Law, Licensee agrees to Indemnify City, Port and their Agents from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

8.3. ***Port Acting As Owner of Property*.** By signing this License, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a Regulatory Agency of City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activity on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

8.4. ***Accessibility*.** California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related

accessibility requirements. The law does not require landlords to have the inspections performed. Licensee is hereby advised that the License Area has not been inspected by a CASp and, except to the extent expressly set forth in this License, Port shall have no liability or responsibility to make any repairs or modifications to the License Area in order to comply with accessibility standards. The following disclosure is required by law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Licensee understands and agrees that Licensee may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws. As further set forth in this Section, Licensee further understands and agrees that it is Licensee's obligation, at no cost to Port, to cause Licensee's use of the License Area to be conducted in compliance with the all federal or state disability access Laws.

9. UTILITIES, SERVICES, MAINTENANCE AND REPAIR.

9.1. ***Utilities.*** Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the License Area except that the foregoing will not diminish any Port obligation under the DDA, if any, to work cooperatively with Licensee with respect to any Licensee right to access utilities. Except as may be otherwise provided in the Basic License Information, Licensee shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the License Area or to be used by Licensee. Except as otherwise set forth in the Development Agreement, Licensee will procure all electricity for the License Area from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. Except as otherwise set forth in the Development Agreement, if the SF Public Utilities Commission determines that it cannot feasibly provide service to Licensee, Licensee may seek another provider.

9.2. ***Services.*** Port has no responsibility or liability of any kind with respect to the provision of any services to Licensee or on, in, or to the License Area. Licensee shall make arrangements and shall pay all charges for all services to be furnished on, in or to the License Area or to be used by Licensee, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

9.3. ***Maintenance and Repairs.*** Licensee shall not be obligated to make any repairs, replacement or renewals of any kind, nature of description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon (collectively, "**Repairs**"), except to the extent that Licensee, or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. In the event that Licensee or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property that is not otherwise consistent with the Pier 70 Mixed-Use Project, Licensee shall be responsible and Port may, at its sole and absolute discretion, elect to repair the same itself or require Licensee to repair the same, all at Licensee's sole cost and expense. Upon receipt of any invoice from Port for costs incurred

by Port related to any repair performed by Port in accordance with this Section, Licensee shall immediately reimburse Port therefor. This provision shall survive the expiration or earlier termination of this License.

10. TAXES AND ASSESSMENTS.

Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the Licensee's possession, use, or occupancy, as distinguished from the ownership, of the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee shall report any assignment or other transfer of any interest in this License or any renewal or extension hereof to the County Assessor within 60 days after such assignment transaction or renewal or extension. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

11. INSURANCE.

11.1. *Required Insurance.*

Licensee shall maintain throughout the Term, at Licensee's expense, insurance in accordance with the insurance provisions set forth in Article 20 of the Master Lease as shown on ***Schedule 1*** (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials) except that the term "Tenant" used thereunder will mean Licensee, the terms "Premises" or "Facility" used thereunder will mean the License Area, and the terms "Improvements," "Horizontal Improvements," "Project," or similar words used thereunder will mean the Pier 70 Mixed-Use Project.

12. NOTICES.

Except as otherwise expressly provided in this License or by Law, all notices (including notice of consent or non-consent) required or permitted by this License or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic License Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by Licensee in Licensee's written response to Port's written request for such information.

All notices under this License shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

13. DEFAULT BY LICENSEE; REMEDIES.

13.1. ***Event of Default.*** The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee; or

(b) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee.

(c) An assignment, or attempted assignment, of this License by Licensee, except in connection with an assignment or other Transfer of Licensee's rights permitted or approved by Port under the DDA;

(d) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License.

13.2. ***Port's Remedies***. Upon default by Licensee, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee's obligations.

14. INDEMNITY AND EXCULPATION.

The provisions of Article 19 (Indemnification of Port) of the Master Lease, as shown on ***Schedule 1*** (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials) will govern, except that "Tenant" as used thereunder will mean Licensee, "Premises" as used thereunder will mean the License Area, and "Improvements," "Horizontal Improvements," or "Project" or similar words as used thereunder will mean the Pier 70 Mixed-Use Project.

15. HAZARDOUS MATERIALS.

The provisions of Article 21 (Hazardous Materials) of the Master Lease as shown on ***Schedule 1*** (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials) will govern except that "Tenant" as used thereunder will mean Licensee, "Premises" as used thereunder will mean License Area, and "Improvements," "Horizontal Improvements," or "Project" or similar words as used thereunder will mean "Pier 70 Mixed-Use Project."

15.1. ***Storm Water Pollution Prevention.***

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. If applicable to the Permitted Activities hereunder, Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning operations in the License Area.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the

San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

15.2. ***Presence of Hazardous Materials.*** California Law requires landlords to disclose to Licensees the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials (as herein defined) may be present on or near the License Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally occurring radionuclides, lead and formaldehyde. [**Note: Add if applicable**: Further, the following known Hazardous Materials are present on the property: Hazardous Materials described in the reports listed in ***Schedule 2*** attached hereto, copies of which have been delivered to or made available to Licensee.] By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Licensee must disclose the information contained in this Section to any sublicensee, licensee, transferee, or assignee of Licensee's interest in this License. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

16. PORT'S ENTRY ON LICENSE AREA.

16.1. ***Entry for Inspection.*** Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties.

16.2. ***Emergency Entry.*** Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License.

16.3. ***No Liability.*** Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area, or entry by the public (as Licensee has a non-exclusive right to use the License Area) onto the License Area.

17. IMPROVEMENTS AND ALTERATIONS.

Except as specified in the Basic License Information to the extent required to implement the Pier 70 Mixed-Use Project and construct the Horizontal Improvements under the DDA, Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area (including the installation of any trade fixtures affixed to the License Area or whose removal will cause injury to the License Area).

18. SURRENDER.

Upon the expiration or earlier termination of this License, Licensee shall surrender to Port the License Area and any pre-existing alterations and improvements in the same or better condition as it was in at the Commencement Date, subject to ordinary wear and tear). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by Licensee properly performing all of its obligations under this License. The License Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this License and any other encumbrances created by Port. On or before the expiration or earlier termination hereof, Licensee shall remove all of its personal property and, unless Port directs otherwise, any

alterations and improvements that Licensee has installed with Port's consent, and perform all restoration made necessary by the removal of Licensee's personal property.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property and any alterations and improvements that Licensee has installed with or without Port's consent that Licensee does not remove from the License Area prior to the expiration or earlier termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned property and repairing any damage to the License Area resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee. Licensee hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

19. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.

19.1. ***Litigation Expenses***. The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this License, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

19.2. ***City Attorney***. For purposes of this License, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

19.3. ***Limitation on Damages***. Licensee agrees that Licensee will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this License, or for any Claim based upon this License, except to the extent of the fair market value of Port's fee interest in the License Area (as encumbered by this License). Licensee's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Licensee expressly waives all such liability.

19.4. ***Non-Liability of City Officials, Employees and Agents***. No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License. Under no

circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

19.5. ***Limitation on Port's Liability Upon Transfer.*** In the event of any transfer of Port's interest in and to the License Area, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this License thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

20. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Fees or otherwise relieve Licensee from any of its obligations under this License.

21. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this License relating to any such code provision shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance. Notwithstanding the foregoing, to the extent that any of the City and Port requirements set forth in this Section 21 have been modified or waived under the DDA or Development Agreement as applied to the Pier 70 Mixed-Use Project, then the applicable provisions of the DDA or Development Agreement will prevail. Without limiting the foregoing, the Workforce Development Plan attached to the DDA will govern Licensee's obligations hereunder with respect to any requirements of the Administrative Code with respect to First Source Hiring (Administrative Code Chapter 83) and Local Business Enterprises (Administrative Code Chapter 14B) that would otherwise be applicable hereto.

21.1. ***Nondiscrimination.***

(a) Covenant Not to Discriminate. In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapters 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapters 12B or 12C of the Administrative Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) Sublicenses and Other Contracts. Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such

Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all Sublicensees and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Licensee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of $50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

21.2. ***Resource-Efficient Facilities and Green Building Requirements***. Licensee agrees to comply with all applicable provisions of Environment Code Chapter 7 relating to resource-efficiency and green building design requirements.

21.3. ***Prohibition of Tobacco Sales and Advertising***. Licensee acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

21.4. ***Prohibition of Alcoholic Beverages Advertising***. Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

21.5. ***Graffiti Removal***. Licensee agrees to remove all graffiti from the License Area, within forty-eight (48) hours of the earlier of Licensee's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "**Graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners,

billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this License or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

21.6. ***Restrictions on the Use of Pesticides***. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee's staff or contractors. If Licensee or Licensee's contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

21.7. ***MacBride Principles Northern Ireland***. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

21.8. ***Tropical Hardwood and Virgin Redwood Ban***. Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

21.9. ***Preservative-Treated Wood Containing Arsenic***. Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the

Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

21.10. ***Notification of Limitations on Contributions***. If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.10 shall apply. Through its execution of this License, Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Licensee further acknowledges that, if applicable, the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that if this Section 21.10 applies, Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

21.11. ***Sunshine Ordinance***. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

21.12. ***Conflicts of Interest***. Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

21.13. ***Drug-Free Workplace***. Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

21.14. ***Public Transit Information.*** Licensee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Licensee employed on the License Area. including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the License Area and encouraging use of such facilities, all at Licensee's sole expense.

21.15. ***Food Service and Packaging Waste Reduction Ordinance.*** Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Licensee agrees that the sum of one hundred dollars ($100.00) liquidated damages for the first breach, two hundred dollars ($200.00) liquidated damages for the second breach in the same year, and five hundred dollars ($500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

21.16. ***San Francisco Bottled Water Ordinance.*** Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the License Area with attendance of more than 100 people.

22. WAIVER OF RELOCATION.

Licensee hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, to the extent allowed under applicable Law.

23. SIGNS.

Licensee shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices on the License Area without Port's prior written consent. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Licensee shall obtain all Regulatory Approvals required by such Laws. Licensee, at its sole cost and expense, shall remove all signs placed by it on the License Area at the expiration or earlier termination of this License.

24. MISCELLANEOUS PROVISIONS.

24.1. ***California Law.*** This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and Licensee hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

24.2. ***Entire Agreement.*** This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License.

24.3. ***Amendments***. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

24.4. ***Severability***. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by law.

24.5. ***Interpretation of License***.

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this License.

(g) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

24.6. ***Successors***. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

24.7. ***Real Estate Broker's Fees***. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

24.8. ***Counterparts***. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

24.9. ***Authority***. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee has and is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

24.10. ***No Implied Waiver***. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

24.11. ***Time is of Essence***. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

24.12. ***Cumulative Remedies***. All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

24.13. ***Survival of Indemnities***. Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

24.14. ***Relationship of the Parties***. Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

24.15. ***No Recording.*** Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

24.16. ***Additional Written Agreement Required.*** Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

25. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"Agents" when used with reference to either party to this License or any other person, means the officers, directors, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"Basic License Information" refers to the summary of basic license information attached to this License.

"CMD" means the Contract Monitoring Division of the City's General Services Agency.

"Cal-OSHA" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"City" is defined in Section 1.

"Claim" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"Commencement Date" means the date specified in the Basic License Information.

"Cure Period" means the period of time described in the Basic License Information.

"DDA" means that certain Disposition and Development Agreement by and between Port and FC Pier 70, LLC, dated as of ________, 2018.

"Development Agreement" means that certain Development Agreement by and between the City and FC Pier 70, LLC, dated

"Encroachment Area" is defined in Section 2.2.

"Encroachment Area Charge" is defined in Section 2.2.

"Environmental Laws" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Environmental Regulatory Action" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Environmental Regulatory Agency" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Environmental Regulatory Approval" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Exacerbate" or **"Exacerbating"** " is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Expiration Date" means the date specified in the Basic License Information.

"**Fees**" means all sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 4.

"**Handle**" or "**Handling**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material Claim**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material Condition**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Indemnified Parties**" the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, all other Person acting on their behalf, and each of them.

"**Indemnify**" means to indemnify, protect, defend, and hold harmless forever. "**Indemnification**" and "**Indemnity**" have correlating meanings.

"**Interest Rate**" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"**Investigate**" or "**Investigation**" is defined in Section 21.6 of Schedule 1 attached hereto.

"**Invitees**" means Licensee's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, Sublicensees, and any other person whose rights arise through them.

"**Late Charge**" means a fee equivalent to fifty dollars ($50.00).

"**Law**" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area, including Regulatory Approvals issued to Port which require Licensee's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the parties.

"**License**" is defined in Section 1.

"**License Area**" means the area described in the Basic License Information.

"**License Fee**" means the monthly usage charge for the License Area described in the Basic License Information.

"**Master Lease**" means Port Lease No. L-________, by and between the Port as Landlord, and FC Pier 70, LLC, a Delaware limited liability company, as Tenant.

"**New Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Notice to Cease Prohibited Use**" is defined in Section 7.

"**Notice to Vacate**" is defined in Section 2.2.

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**Permitted Activity**" is means the activity described in the Basic License Information.

"**Pier 70 Mixed-Use Project**" means that certain development project undertaken by Licensee as more particularly described in the DDA and Development Agreement.

"**Pier 70 Risk Management Plan**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Pre-Existing Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Port**" is defined in Section 1.

"**prevailing party**" is defined in Section 19.1.

"**Prohibited Use**" is defined in Section 7.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"**Release**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Remediate**" or "**Remediation**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**State Lands Indemnified Parties**" means the State of California, the California State Lands Commission, all of its heirs, legal representatives, successors and assigns, and all other Persons acting on its behalf.

"**SWPPP**" is defined in Section 15.1.

"**Term**" is defined in Section 3.

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IN WITNESS WHEREOF, Port and Licensee have executed this License as of the last date set forth below

Licensee: **FC PIER 70, LLC,** a Delaware limited liability company

By: ______________________________
Name: ______________________________
Title: ______________________________

Date signed: ______________________________

By: ______________________________
Name: ______________________________
Title: ______________________________

Date signed: ______________________________

Port: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: ______________________________
Michael J. Martin,
Deputy Director, Real Estate and Development

Date signed: ______________________________

Approved as to Form: DENNIS J. HERRERA, City Attorney

By: ______________________________
Deputy City Attorney

License Prepared by [INSERT NAME] , Commercial Property Manager____________(initial)

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SCHEDULE 1

MASTER LEASE PROVISIONS FOR INDEMNITY, INSURANCE AND HAZARDOUS MATERIALS

19. INDEMNIFICATION OF PORT.

19.1. General Indemnification of the Indemnified Parties. Subject to Section 19.4, (Exclusions from Indemnifications, Waivers and Releases). Tenant agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the Premises or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the Premises, or any acts or omissions of Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

(b) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises or any part thereof by Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

(c) any latent, design, construction or structural defect relating to the Improvements, any other Subsequent Construction, or any other matters relating to the condition of the Premises caused directly or indirectly by Tenant or any of its Agents, Invitees, or Subtenants;

(d) any failure on the part of Tenant or its Agents, Invitees, or Subtenants, as applicable, to perform or comply with any of the terms, covenants, or conditions of this Lease or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents or Subtenants;

(f) any acts, omissions, or negligence of Tenant, its Agents, Invitees, or Subtenants; and

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use or occupancy.

19.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under Section 19.1 (General Indemnification of the Indemnified Parties) and subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), Tenant, for itself and on behalf of its Subtenants, Agents, or any of their respective Agents (individually "Related Third Party" and collectively "Related Third Parties") or their respective Invitees agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition existing or occurring during the Term;

(ii) any Handling or Release of Hazardous Materials in, on, under, around or about the Premises during the Term;

(iii) any Exacerbation of any Hazardous Material Condition in, on, under, around or about the Premises during the Term; or

(iv) failure by Tenant or any Related Third Party to comply with the Pier 70 Risk Management Plan, or failure by their respective Invitees to comply with the Pier 70 Risk Management Plan within the Premises during the Term; or

(v) claims by Tenant or any Related Third Party for exposure during the Term from and after the Commencement Date to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(b) Losses under Section 19.2(a) includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date of demand until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(c) Tenant understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this Section 19.2, subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), arises upon the earlier to occur of:

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises;

(ii) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises;

(iii) the Exacerbation of any Hazardous Material Condition; or

(iv) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

19.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in Section 19.4 (Exclusions from Indemnifications; Waivers and Releases), Tenant's Indemnification obligations under this Lease are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Tenant, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Tenant and continues at all times thereafter until finally resolved. Tenant's Indemnification obligations under this Lease are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Tenant constitute Additional Rent owing from Tenant to Port hereunder and are due and payable from time to time immediately upon Port's request, as incurred.

19.4. Exclusions from Indemnifications; Waivers and Releases.

(a) Nothing in this Article 19 (Indemnification of Port) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in Sections 19.1 (General Indemnification of Indemnified Parties), 19.2 (Hazardous Materials

Indemnification),), or the defense obligations set forth in Sections 19.3 (Scope of Indemnities) and 19.6 (Defense) extend to Losses:

(i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, or

(ii) from third parties' claims for exposure to Hazardous Materials in, on or under any portion of the Premises prior to the earlier of the (1) commencement of the License, if any, executed under the DDA for access to such portion of the Premises prior to the effective date of this Lease where Tenant has exclusive control of the Premises; or (2) effective date of this Lease with respect to such portion of the Premises; or

(iii) without limiting Tenant's Indemnification obligations under Sections 19.2(a)(ii), 19.2(a)(iv), or 19.2(a)(v), and to the extent the applicable Loss was not caused by the failure of Tenant or a Related Third Party to comply with the Pier 70 Risk Management Plan, or the failure of their respective Invitees to comply with the Pier 70 Risk Management Plan while on the Premises, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Horizontal Improvement Parcels after the Acceptance Date for such parcel (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Horizontal Improvement Parcel and is not also present in, on or around the Premises); provided, however, the foregoing limitation on Tenant's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Tenant or any of its Related Third Parties.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under Section 19.2 (Hazardous Materials Indemnification) is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Tenant in asserting a claim or claims under such insurance policy but without waiving any of its rights under Section 19.2 (Hazardous Materials Indemnification). Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Tenant, the Indemnification from Tenant under Section 19.2 (Hazardous Materials Indemnification) will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Tenant pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Tenant.

19.5. Survival. Tenant's Indemnification obligations under this Lease and the provisions of this Article 19 (Indemnification of Port) survive the expiration or earlier termination of this Lease (or, the partial termination of this Lease with respect to any portion of the Premises released in accordance with Section 1.1(b) Adjustment of Premises for Development)).

19.6. Defense. Tenant will, at its option but subject to reasonable approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Tenant's choice; provided, that in all cases Port will be entitled to participate in such defense, compromise or settlement at its own expense. If Tenant fails, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port will have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole cost, to carry out such defense, compromise or settlement which expense is due and payable to the Port within fifteen (15) days after receipt by Tenant of a detailed invoice for such expense.

19.7. Waiver. As a material part of the consideration of this Lease, Tenant hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from any Losses, including (i) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (ii) goodwill, (iii) business opportunities, (iv) any act or omission of persons occupying adjoining premises, (v) theft, (vi) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination, (vii) Building defects, (viii) inability to use all or any portion of the Premises due to sea level rise or flooding or seismic events, (ix) arising from the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard, and (x) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the Premises or the 28-Acre Site, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of the Indemnified Parties or State Lands Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties or State Lands Indemnified Parties, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Tenant or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties or State Lands Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue, or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties or State Lands Indemnified Parties arising out of this Lease or the uses authorized hereunder, including, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the waivers and releases in this Lease will remain effective. Therefore, with respect to the claims released in this Lease, Tenant waives any rights or benefits provided by California Civil Code Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE WAIVERS AND RELEASES MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE WAIVERS AND RELEASES AT THE TIME THIS LEASE WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Tenant's Initials: ____________

Tenant acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

20. INSURANCE.

20.1. Required Insurance Coverage. In addition to the Additional Insurance Requirements to be provided by Tenant or Tenant's Subtenants or Agents that conduct any Special Event under Exhibit H (Procedures for Special Events), Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than Twenty Million Dollars ($20,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, liquor liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars ($250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Subsequent Construction or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than Five Million Dollars ($5,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation Tenant's Agents and Invitees.

(c) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation in statutory amounts, with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury, or illness. In the event Tenant is self-insured for the insurance required pursuant to this Section 20.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. In addition, Tenant will be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively as applicable with Employer's Liability limit not less than Five Million Dollars ($5,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Subsequent Construction, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's personal property or contractors' equipment as applicable.

(e) Flood Insurance.

(i) During construction of the improvements, for any parcel located within a flood zone on the City's flood maps, flood insurance will be in an amount equal to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates.

(ii) During construction of the improvements, for any parcel not located within a flood zone on the City's flood maps, flood insurance will be in an amount to the extent available at commercially reasonable rates from recognized insurance carriers or through the NFIP equal

to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates

(f) Pollution Legal Liability. Tenant, at its sole cost and expense, will procure Pollution Legal Liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim, for a period of not less than five (5) years, and a subsequent policy for an additional five (5) years, for a total term of ten (10) years. Each of the State Lands Indemnified Parties will be named as additional insureds under the terms of any such policy. If Tenant procures any such policy for a period that is longer than ten (10) years, Tenant will ensure that each of THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE STATE LANDS INDEMNIFIED PARTIES are named as additional insureds for such longer period of time.

(g) Construction Activities. Insurance required in connection with construction of Horizontal Improvements is as set forth below:

(i) Contractor Requirements. Tenant must require its contractors and subcontractors to maintain the following coverages:

(1) Commercial general liability insurance with limits of not less than $5 million each occurrence on a policy form that is at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01);

(2) Comprehensive automobile liability insurance with a policy limit of not less than $5 million each occurrence on a policy form that is at least as broad as ISO Form Number CA 0001 covering automobile liability, Code 1 (any auto);

(3) Worker's compensation insurance with statutory limits and employer's liability insurance with limits of not less than $1 million each accident, injury, or illness;

(4) Watercraft liability insurance (if operating watercraft) protection and indemnity insurance with limits not less than $1 million each occurrence, or with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, wreck removal, and damages "In Rem" (the vessel); and

(5) Marine general liability (MGL) (if operating watercraft) with limits not less than $10 million each occurrence and aggregate basis;

(6) Vessel pollution liability insurance (if operating watercraft with engines or fuel usage) with limits not less than $5 million per occurrence and $5 million in the aggregate with a deductible not to exceed $50,000 with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost; insurance should cover liability imposed under laws for any loss, damage, cost, liability or expense arising out of the sudden, accidental, and unintentional discharge, spillage, leakage, emission, or release of any substance of any kind into or on the navigable waters of the United States or the adjoining shorelines.

(7) Contractor's pollution liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim.

(ii) Builder's Risk Requirements. In addition, Tenant or General Contractor must carry "Builder's All Risk" insurance on a "Special Form" ("All Risk") Builder's Risk meeting the following requirements.

(1) The amount of coverage must be equal to the full replacement cost of any existing structures affected by the work and full replacement cost of all new construction, including all materials and equipment intended to become part of the permanent structures. The policy must provide coverage for "soft costs," such as design and engineering fees, code

updates, permits, bonds, insurance, and inspection costs caused by an insured peril. The Builder's Risk insurance may have a deductible clause not to exceed $100,000.

(2) The Builder's Risk policy must identify the City and County of San Francisco and the San Francisco Port Commission as loss payees, subordinate to any lender requirements.

(3) The Builder's Risk policy must include the following coverages: (A) all damages of loss to the work and to appurtenances, to materials and equipment to be incorporated into the project while the same are in transit, stored on or off the site, to construction plant and temporary structures; (B) the costs of debris removal, including demolition as may be made reasonably necessary by covered perils, resulting damage, and any applicable law; and (C) start up and testing and machinery breakdown including electrical arcing.

(iii) Professional Services Requirements. Tenant must require all providers of engineering and geotechnical professional services under contract with Tenant to provide professional liability coverage with limits not less than Five Million Dollars ($5,000,000.00) each claim. With respect to all other professional services provided to Tenant for the Horizontal Improvements, Tenant must require all providers of such professional services under contract with Tenant to provide professional liability coverage with limits not less than Two Million Dollars ($2,000,000.00) each claim. Such insurance will provide coverage during the period when such professional services are performed and for a period of 3 years after issuance of a Certificate of Occupancy for the Horizontal Improvements. This requirement may be met by the use of an extended reporting period. Notwithstanding anything to the contrary, the coverage required in this clause (iii) may be provided with a lower limit for subcontractors that are local business enterprises (LBEs) or are performing work under subcontracts of $100,000 or less only. Tenant shall have the right to request a waiver of the requirements of this clause (iii) by delivering written request to Port, and Port shall respond within a reasonable period of time to any such request; provided, with respect to waiver requests for LBEs and subcontracts only, so long as the waiver request was sent by electronic mail, addressed to one or more line staff responsible for administration of this Lease stating in the subject line "Immediate Action Required to Avoid Deemed Consent" or words to the same effect, Port will be deemed to have approved such waiver if Port does not respond to the waiver request within five (5) business days.

(h) Other Coverage. Such other insurance or different coverage amounts may change from time to time as required by the City's Risk Manager, if in the reasonable judgement of the City's Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the Premises, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Tenant determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Tenant will provide to Port evidence supporting Tenant's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(i) Substitution. Notwithstanding the foregoing, Tenant shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in this Article 20 (Insurance) with insurance coverage maintained by one or more of Tenant's Agents, Invitees or transferees as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of this Article 20 as determined by Port.

20.2. General Requirements.

(a) Insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance required hereunder, such insurance shall name the Tenant as the first named insured. As to liability insurance Tenant shall ensure that Port and the City of San Francisco are named as additional insureds under all general liability, automobile liability, vessel pollution, pollution, Public Boat Dock liability coverages. Any umbrella and/or excess liability insurance will include an endorsement through a blanket additional endorsement or equivalent naming as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) As to Commercial General Liability and automobile liability insurance, shall provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought;

(iv) Will provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 20.1(a) (General Liability Insurance), 20.1(b) (Automobile Liability Insurance), 20.1(c) (Worker's Compensation),, and 20.1(f) (Pollution Legal Liability);

(v) Will be subject to the reasonable approval of Port, which approval shall not be unreasonably withheld.

(b) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant shall furnish Port certificates with respect to the policies required under this Section within thirty (30) days after the Commencement Date and, with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy, and, within sixty (60) days after Port's request, shall also provide Port with copies of each such policy, or shall otherwise make such policy available to Port for its review. If at any time Tenant fails to maintain the insurance required pursuant to Section 20.1, (Required Insurance Coverage), or fails to deliver certificates as required pursuant to this Section, then, upon thirty (30) business days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Tenant shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(c) Insurance of Others. To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies be endorsed to include the "CITY AND COUNTY OF SAN FRANCISCO AND THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES" as additional insureds under the terms of any such policy. Unless otherwise specified in this agreement, Tenant will ensure that all contractors and sub-contractors performing work on the Premises and all operators and subtenants of any portion of the Premises carry adequate insurance coverages.

(d) Excess Coverage. All requirements may be satisfied by any combination of umbrella and excess liability policies (including blanket policies).

20.3. Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 20.1(d) (Personal Property Insurance) to the extent that such loss is reimbursed by an insurer.

21. HAZARDOUS MATERIALS.

21.1. Compliance with Environmental Laws. Tenant will comply and cause its Agents, Invitees, and all Persons under any Sublease, to comply with all Environmental Laws, operations plans (if any), the Pier 70 Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials on, under or about the Premises, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable Laws and any reasonable conditions or limitations required by Port, (c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

21.2. Tenant Responsibility. Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the Premises except as permitted under Section 21.1 (Compliance with Environmental Laws);

(b) Will not cause or permit any Hazardous Material Condition; and

(c) Will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the Premises, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles used in connection with the Premises in violation of any Environmental Laws;

(d) Tenant will be the "Generator" of any waste, including hazardous waste , resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the Premises;

(e) Will comply with all provisions of the Pier 70 Risk Management Plan with respect to the Premises, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually and

(f) Will comply, and will cause all of its Subtenants that are subject to an operations plan, to comply with the operations plan applicable to Tenant or such Subtenant, if any.

21.3. Tenant's Environmental Condition Notification Requirements. The following requirements are in addition to the notification requirements specified in the (i) operations plan(s), if any, (ii) the Pier 70 Risk Management Plan, and (iii) Environmental Laws:

(a) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 21.1 (Compliance with Environmental Laws), Handled, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Tenant's notice to Port by oral or other means, Tenant must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Tenant's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Tenant's receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or Tenant's occupancy of the Premises;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, under or about the Premises during the Term or Tenant's occupancy of the Premises; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises. Tenant must provide Port with copies of any of the documents within the scope of this Section 21.3(d) upon Port's request.

(e) Tenant must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. At Tenant's request, in lieu of providing Port with copies of non-privileged communications with other persons that are not Environmental Regulatory Agencies, Tenant will (1) make available for Port's review, such non-privileged communications at Tenant's San Francisco office or at Port's office, and (2) reimburse Port for additional costs related to Port's review of such non-privileged communications at Tenant's San Francisco office (including but not limited to additional time related to travel to and from Tenant's office).

(f) Port may from time to time request, and Tenant will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

21.4. Remediation Requirement.

(a) After notifying Port in accordance with Section 21.3 (Tenant's Environmental Condition Notification Requirements) and subject to Section 21.4(d), Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises; provided Tenant must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with Section 21.3. Except as provided in the previous sentence, Tenant must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under Section 21.4(a), before this Lease terminates for any reason, Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease: (i) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Tenant's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Tenant's use of the Premises, or due to Subsequent Construction or construction of the Horizontal Improvements.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take actions that are reasonably necessary in Port's reasonable judgment to protect the value of the Premises, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises.

(d) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, under, around or about the Premises, Tenant will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

21.5. Pesticide Prohibition. Tenant will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage as further described in Section 21.6 of the body of the License.

21.6. Additional Definitions.

"Environmental Laws" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees, and all permits, licenses, approvals, or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety, or community right-to-know requirements related to the work being performed under this Lease. "Environmental Laws" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016,by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"Environmental Regulatory Action" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"Exacerbate" or "Exacerbating" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission, it being understood that the mere discovery of Hazardous Materials does not cause "Exacerbation". Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, construction of Improvements and Alterations under this Lease. "Exacerbate" also means failure to comply with the Pier 70 Risk Management Plan. "Exacerbation" has a correlative meaning.

"Handle" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "Handling" and "Handled" have correlative meanings.

"Hazardous Material" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted, or otherwise

regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. "Hazardous Materials" also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"Hazardous Material Claim" means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties, the State Lands Indemnified Parties, or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"Hazardous Material Condition" means the Release or Exacerbation, or threatened Release or Exacerbation, of Hazardous Materials in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, under, or about the Premises during the Term or Tenant's occupancy of the Premises.

"Investigate" or "Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"New Hazardous Material" means a Hazardous Material that is not a Pre-Existing Hazardous Material.

"Pier 70 Risk Management Plan" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"Pre-Existing Hazardous Materials" means any Hazardous Material existing on, in, about or around the Premises as of the Effective Date and identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"Release" means when used with respect to Hazardous Materials any accidental, actual, imminent or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"Remediate" or "Remediation" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat,

stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"State Lands Indemnified Parties" means the State of California, the California State Lands Commission, and all of their respective heirs, legal representatives, successors and assigns, and all other Persons acting on their behalf.

LICENSE TO USE PROPERTY
SCHEDULE 2
HAZARDOUS MATERIAL DISCLOSURE

[To be prepared and attached prior to execution]

LICENSE TO USE PROPERTY
SCHEDULE 3
ASBESTOS NOTIFICATION AND INFORMATION

[To be prepared and attached prior to execution]

DDA EXHIBIT B12

FORM OF GUARANTY – LOSS SECURITY
(28-Acre Site Project)

This **GUARANTY** (28-Acre Site Project) (this "**Guaranty**"), is made by ________________ "**Obligor**"), in favor of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation and charter Port (the "**City**"), acting by and through the **SAN FRANCISCO PORT COMMISSION** (the "**Port**" or the "**Port Commission**"), as of the effective date under **Section 1.1**, in reference to the Disposition and Development Agreement, dated as of ________, 2018 (the "**DDA**"), between the Port and FC Pier 70, LLC, a Delaware limited liability company ("**Developer**"). In addition to terms defined in this preamble and the Appendix, capitalized terms used in this Guaranty are defined in **Section 1.4**.

1. GUARANTY

1.1. Effective Date. This Guaranty will be effective on the date that Obligor delivers the executed original of this Guaranty to the Port.

1.2. Guaranteed Obligation. Under the terms of this Guaranty, Obligor irrevocably and unconditionally guarantees to the Port of the full performance of the Guaranteed Obligation. This Guaranty is an absolute, unconditional, present, and continuing guaranty and is a guaranty of payment and performance, not of collection and enforcement. Obligor's obligations under this Guaranty are direct and primary.

(a) Performance. Obligor agrees to perform the Guaranteed Obligations at its sole expense promptly after receiving the Port Demand. In performing the Guaranteed Obligations, Obligor also agrees to pay any costs that the Port reasonably incurs because of Developer's failure to perform the Performance Obligations.

(b) Payment. Any amount due under this Guaranty but not paid within 30 days after Obligor's receipt of the Port Demand will bear interest at the annual rate of 10% from the date the Port Demand was delivered to Obligor until paid. Interest will be calculated on the basis of a 365-day year and the actual number of days elapsed, compounded annually.

1.3. Direct Action Permitted. Obligor's obligations under this Guaranty are independent of Developer's obligations under the DDA. Accordingly, the Port may:

(a) enforce any of its rights under this Guaranty independently of its other rights or remedies following the Material Breach;

(b) bring an action against Obligor without first proceeding against Developer or any other Credit Enhancement or Credit Enhancer, regardless of whether Developer is joined in the action; and

(c) join Obligor in any action against Developer under the DDA to enforce the Guaranteed Obligation.

1.4. Definitions. The following terms are defined as follows.

"**Credit Enhancement**" means any form of collateral or additional security given to the Port for Developer's performance under the DDA, including this Guaranty and guaranties given by any other person.

"**Credit Enhancer**" means any person providing Credit Enhancement, including Obligor.

"**Dollars**" and "**$**" signify legal tender of the United States of America.

"**fiscal year**" means the annual period applicable to Obligor's fiscal reporting.

"**Guaranteed Obligation**" means the Developer Reimbursement Obligation for Phase XXXX of the Project to the extent not satisfied by Developer or any other source.

"**Liquid Assets**" means the sum of the following assets of Obligor:

(i) cash;

(ii) demand deposits;

(iii) marketable securities consisting of short-term (maturities of one year or less) obligations issued or guaranteed as to principal and interest by the United States of America;

(iv) short-term (maturities of one year or less) certificates of deposit issued by a federally-chartered bank with assets greater than $50 million;

(v) other marketable securities traded on a nationally-recognized exchange operating in the United States; and

(vi) mutual funds.

"**Loss Security**" means Adequate Security that Developer is required to provide under *DDA § 17.2 (Loss Security)* to secure the Developer Reimbursement Obligations for each Phase.

"**Loss Security End Date**" means the date that is one year after the earliest to occur of the following events:

(i) issuance of an SOP Compliance Determination for all Phase Improvements except Deferred Infrastructure to be constructed by an Unrelated Vertical Developer within the Phase;

(ii) expiration or termination of the DDA with respect to Developer; and

(iii) expiration or termination of all of Developer's rights to develop or submit Phase Submittal applications to develop any portion of the FC Project Area.

"**Obligor Net Worth**" when used in reference to an issuer of Adequate Security means a person's net worth calculated in accordance with GAAP or the income tax basis of accounting consistently applied, and for a corporation or other legal form, owner equity.

"**Obligor Net Worth Requirement**" when used in reference to Adequate Security means a person with an Obligor Net Worth no event less than $27.5 million, subject to an automatic increase of 10% on the fifth anniversary of the Reference Date and every succeeding fifth year during the DDA Term or as otherwise approved by the Port Director.

"**Port Demand**" means Port's demand for Obligor's performance under this Guaranty, delivered in accordance with **Section 7.2**, following the occurrence of a Material Breach by Developer with respect to its performance of any of the Guaranteed Obligations.

"**Secured Amount**" means Obligor's maximum liability under this Guaranty to the Port, which is limited to $5 million, exclusive of the Port's costs of enforcement and collection under this Guaranty.

"**Significant Adverse Change to Obligor**" means the occurrence of:

(i) an Insolvency proceeding with respect to Obligor that is not dismissed within 120 days after it is filed; or

(ii) entry of a final judgment against Obligor in an amount greater than 20% of the Obligor Net Worth, if Obligor does not satisfy or bond the judgment; or

(ii) Obligor Net Worth falling below the Obligor Net Worth Requirement.

"**Substitute Security**" means a form of Adequate Security given to replace this Guaranty under conditions specified in *DDA § 17.4(b) (Effect of Significant Adverse Change)* that:

(i) is in form and substance and issued by one or more persons meeting the Obligor Net Worth Requirement reasonably satisfactory to the Port; and

(ii) meets all DDA requirements for Loss Security.

2. WAIVERS

By executing this Guaranty, Obligor freely and knowingly, irrevocably, absolutely, and unconditionally waives all of the following rights and benefits it might otherwise have.

2.1. General Waivers. Obligor waives:

(a) notice of acceptance of this Guaranty;

(b) demand of payment, notice of nonperformance, notice of dishonor, presentation, protest, and notices of any kind, except as specifically provided in this Guaranty;

(c) any right to assert or plead any statute of limitations relating to this Guaranty or the DDA;

(d) any right to require the Port to proceed against Developer or any other person liable to the Port except to the extent expressly set forth in the DDA;

(e) any right to require the Port to apply any other security it may hold under the DDA to cure Developer's default, except to the extent expressly set forth in the DDA;

(f) any right to require the Port to pursue or enforce any remedy that the Port now has or may later have against Developer or any other person;

(g) any right to participate in any other security now or later held by the Port;

(h) any defense that Developer may have due to:

(i) the incapacity, lack of authority, death, or disability of Developer or any other person;

(ii) Obligor's attempted revocation or repudiation of this Guaranty;

(iii) the Port's failure to file or enforce a claim against the estate (in any other proceeding) of Developer or any others;

(iv) any Port election in a proceeding under the United States Bankruptcy Code, as amended (11 U.S.C. §§ 101 et seq.);

(v) any borrowing or granting of a security interest under the United States Bankruptcy Code;

(vi) the Port's election of any remedy against Obligor, Developer, or any other party to the extent permitted under this Guaranty or the DDA even if the Port's

election destroys Obligor's rights of subrogation and reimbursement against Developer or any other Credit Enhancer by operation of law or otherwise;

(vii) the Port's taking, modification, or releasing of any collateral or guarantees, or failure to perfect any security interest in, or the taking of or failure to perfect any other action with respect to any collateral securing performance of obligations under the DDA without an express release of this Guaranty;

(viii) any act or omission by the Port that directly or indirectly results in or aids the discharge of Developer, any other Credit Enhancer, or any of the Guaranteed Obligation by operation of law or otherwise, unless the discharge results in the full satisfaction of the applicable Guaranteed Obligation;

(ix) any amendment or modification of the DDA or related documents, whether or not known or consented to by Obligor;

(x) any offset by Obligor against any obligation now or later owed to Obligor by Developer or any other person, regardless of any act or omission that might otherwise operate as a legal or equitable discharge of Obligor;

(xi) Developer's sale, transfer, or assignment of any portion of its interest in the DDA or the FC Project Area or of its interest in the Master Lease or the License; and

(xii) prior actions or proceedings by the Port against Developer or Obligor following a default by Developer under the DDA, the Master Lease, or the License; and

(i) all benefits under California Civil Code sections 2787-2855, inclusive, and sections 2899 and 3433.

2.2. Subrogation.

(a) Waiver of Subrogation. Obligor waives any defense to enforcement of this Guaranty based on the impairment or destruction of its right of subrogation, reimbursement, contribution, or indemnification for any amounts paid or cost incurred by Obligor under this Guaranty and defense at law or in equity, including any rights with respect to real property security under section 580d of the California Code of Civil Procedure, as interpreted in *Union Bank v. Gradsky* (1968) 265 Cal.App.2d 40, or under one or more of sections 580a, 580b, or 726 of the California Code of Civil Procedure. In that regard, Obligor agrees that none of will affect its liability for the Guaranteed Obligation under this Guaranty.

(b) Revival of Obligor's Rights. After the Guaranteed Obligation are fully satisfied, Obligor will be subrogated to the Port's rights against Developer or others with respect to the Guaranteed Obligation. The Port will take steps that Obligor reasonably requests to implement the subrogation on condition that:

(i) Obligor pays all costs the Port incurs to implement the request; and

(ii) Obligor holds the Port harmless from any resulting liability in form and substance reasonably satisfactory to the Port.

(c) The Port agrees that none of the waivers or consents given by Obligor in this Guaranty will impair Obligor's rights under this Section.

2.3. **Enforcement**. Obligor waives all rights to require the Port to do any of the following:

(a) seek performance of the Guaranteed Obligation from Developer or any other Credit Enhancer or Credit Enhancement, or marshall assets or liens, before seeking performance of the Guaranteed Obligation from Obligor;

(b) apply any payments Obligor makes under this Guaranty in any particular manner;

(c) enforce any remedy that the Port has against Developer or any other Credit Enhancer at any time;

(d) provide any benefit of, or any right to participate in or direct the application of, any existing or after-acquired Credit Enhancement; and

(e) try any action relating to this Guaranty or the DDA, the Master Lease, or the License before a jury.

2.4. **Port's Reliance**. Obligor acknowledges that the Port is relying on all of the waivers contained in this Guaranty, and that these waivers are a material part of the consideration to the Port for entering into the DDA, the Master Lease, and the License.

2.5. **Reasonableness and Effect of Waivers**. Obligor expressly agrees that:

(a) each of the waivers given in this Guaranty is made with full knowledge of its significance and consequences;

(b) under the circumstances, the waivers are reasonable and not contrary to public policy or law; and

(c) if any waiver is determined to be contrary to any applicable law or public policy by a final judgment, that waiver will be effective only to the maximum extent permitted by law, and no other waiver will be affected.

3. PORT'S AUTHORITY TO MODIFY OBLIGATIONS

The Port has the right to take any of the following actions at any time without notice and without affecting Obligor's obligations under this Guaranty:

(a) amend, compromise, release, or otherwise alter the DDA (in accordance with its terms) and any Credit Enhancement;

(b) accept new or additional Credit Enhancement;

(c) accept partial payment on or partial performance of, or forbear from enforcement of, the Guaranteed Obligation;

(d) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate, or enforce any part of the Guaranteed Obligation and any Credit Enhancement and apply any Credit Enhancement to the Guaranteed Obligation;

(e) release Developer and any other Credit Enhancer from liability for any part of the Guaranteed Obligation; or]

(f) consent (to the extent the Port's consent is required under the DDA) to Developer's sale, transfer, or assignment of any part of its interest in the DDA, the Master Lease, the License, or any Parcel Lease.

3.2. Consents. Obligor consents to and agrees that none any the following will affect its obligations under this Guaranty or the validity of this Guaranty, whether or not Obligor has notice. The Port in its sole discretion, may take any of the following actions:

(a) refuse or fail to enforce any portion of its rights under this Guaranty, the DDA, or any related documents;

(b) compromise, settle, or extend the time for payment or performance of all or any part of the Guaranteed Obligation; and

(c) deal in all respects with Obligor as if this Guaranty were not in effect.

3.3. No Discharge of Obligations. Obligor expressly intends to remain liable for the Guaranteed Obligation under this Guaranty, regardless of any act or thing that might otherwise operate as a legal or equitable discharge of a surety.

3.4. Payments to Other Persons. The Port will be under no obligation to marshall any assets in favor of Obligor or against, or in payment or performance of, any or all of the Guaranteed Obligation. If the Port is required to disgorge any payment applied to the Guaranteed Obligation in an Insolvency proceeding or in any other forum where the payment is avoided as a fraudulent conveyance or preferential payment, or for any other reason, the portion of the Guaranteed Obligation covered by the disgorged payment will be revived as if the avoided payment had not been made.

3.5. Additional Rights. This Guaranty is in addition to, and not in substitution for or in reduction of, any other guaranty by Obligor, or any obligation of Obligor under any other agreement or applicable law that may now or later exist in favor of the Port. Obligor's liability under this Guaranty will not be contingent upon the Port's enforcement of any lien or realization upon any other security the Port may hold for the Guaranteed Obligation.

3.6. Recourse. The Port will have the absolute right to seek recourse against Obligor to the full extent provided in this Guaranty, without impairment due to the Port's inability to claim any amount of the Guaranteed Obligation from Obligor or Developer or others as a result of Insolvency under the Bankruptcy Code or other applicable law. No election to proceed in one form of action or proceeding, or against any person, or on any obligation, will be a waiver of the Port's right to proceed in any form of action or proceeding or against other persons unless the Port has expressly waived that right in writing.

4. REPRESENTATIONS AND WARRANTIES

4.1. Obligor Representations. By executing and delivering this Guaranty, Obligor represents and warrants to the Port, and agrees that the Port may rely unconditionally on, all of the following representations of Obligor as of the effective date under **Section 1.1**.

(a) Authority. Obligor has the power and authority to execute and deliver this Guaranty and to perform its obligations under it.

(b) Current Knowledge. Obligor:

(i) has performed an independent investigation into the matters covered by this Guaranty;

(ii) has received a copy of, is familiar with, and fully understands the DDA and the Guaranteed Obligation; and

(iii) has had the opportunity to consult with counsel of its choice regarding the legal effect of this Guaranty.

(c) Future Information. Obligor has established adequate means of obtaining from Developer on a continuing basis financial, operational, and other information pertaining to Developer's performance of its obligations under the DDA, the Master Lease, and the License. Obligor assumes full responsibility for keeping fully informed with respect to Developer's ownership, business, operation, condition, and assets.

(d) Relationship to Developer. Obligor owns indirectly all or a controlling portion of Developer's membership interests, or of the stock of Developer's sole or controlling stockholder parent entity.

(e) Ratification. Obligor ratifies all of Developer's acts with respect to its decision to enter into the DDA, the Master Lease, and the License with the Port and to begin development of the FC Project Area.

(f) Consideration. Obligor:

(i) has received adequate consideration for executing and delivering this Guaranty to the Port; and

(ii) will derive material financial benefit from the Port's execution of the DDA and the Port's actions under which the obligation to provide this Guaranty arose.

(g) Effectiveness. No conditions to the full effectiveness of this Guaranty exist.

(h) No Port Representations or Duties. The Port:

(i) has not made any representations or warranties to Obligor regarding Developer's creditworthiness and business acumen or the prospects of performance of the Guaranteed Obligation from sources other than Developer;

(ii) except to the extent within the scope of public records laws, will have no duty to disclose or report to Obligor any information disclosed to the Port at any time relating to Developer's ownership, business, operation, condition, or assets; and

(iii) will have no duty to inquire into Developer's authority or powers with regard to the Guaranteed Obligation.

4.2. **Enforceability**. This Guaranty is a valid and binding obligation of Obligor, enforceable in accordance with its terms. Obligor will execute, acknowledge, and deliver to the Port all documents and take all actions reasonably required by the Port from time to time to confirm or effect the matters set forth in, or otherwise to carry out the purposes of, this Guaranty.

4.3. **Obligor Net Worth Requirement.**

(a) Agreement. Obligor agrees:

(i) at all times while this Guaranty is in effect to meet the Obligor Net Worth Requirement; and

(ii) to maintain no less than $27.5 million in Liquid Assets until the Loss Security End Date.

(b) Required Notices. Obligor agrees to advise the Port promptly of:

(i) any transaction providing for the sale, transfer, encumbrance, pledge, mortgage, or other disposition of any Liquid Assets or the rents, profits, or proceeds of Liquid Assets if, after the transaction, Obligor would no longer meet the minimum Liquid Assets requirement; and

(ii) the completion of the financial audit of Obligor for the fiscal year preceding the effective date of this Guaranty.

(c) Time of Verification.

(i) Obligor will provide evidence of compliance with the Obligor Net Worth Requirement under **Section 4.3** (Obligor Net Worth Requirement) at no cost to the Port within10 business days after Obligor delivers notice to the Port that the financial audit of Obligor for the fiscal year immediately preceding the Effective Date is complete.

(ii) Obligor must demonstrate that it complies with the Obligor Net Worth Requirement by making available for review by the Port in a private data room Obligor's audited financial statements, and copies of any conditional or revocable agreements necessary for Obligor to meet the Obligor Net Worth Requirement noted in the financial statements.

(iii) Before delivering this Guaranty to the Port, Obligor must verify that Obligor satisfies the Obligor Net Worth Requirement.

(iv) Not more than once in any calendar year unless the Port reasonably believes that a Significant Adverse Change to Obligor has occurred, the Port may require Obligor to verify that it still meets the Obligor Net Worth Requirement in accordance with **Section 4.3(d)**.

(d) Form of Verification.

(i) Obligor will verify that it meets the Obligor Net Worth Requirement when required under **Section 4.3(c)** by delivering to the Port a copy of a financial statement on the Obligor's financial condition prepared by a CPA. The report must not be dated more than six months before the Effective Date or the date of any later Port request and must include the CPA's unqualified opinion that the data in financial statement are fairly stated in all material respects.

(ii) Obligor's audited financial statements must be performed in accordance with GAAP or tax basis accounting standards consistently applied, and the CPA that prepared them must opine that the financial statements present fairly, in all material respects, Obligor's financial position for the applicable fiscal year and changes in its financial position and cash for that period in conformity with the applicable accounting standards.

(iii) If Obligor is a publicly-traded company, the requirement for an independent financial statement will be waived, but Obligor will provide Port with relevant publicly available financial information to verify Obligor's Net Worth.

(e) Substitute Security.

(i) If at any time while this Guaranty is in effect, the Obligor Net Worth falls below the Obligor Net Worth Requirement or a Significant Adverse Change to Obligor occurs, Obligor will notify the Port and Developer as soon as reasonably practicable.

(ii) Whether or not Obligor provides notice under **clause (i)** of this Subsection, Developer is required under *DDA § 17.4(b) (Effect of Significant Adverse Change)* to provide the Port with Substitute Security.

(iii) If Developer does not comply with *DDA § 17.4(b) (Effect of Significant Adverse Change)*, Obligor agrees to provide Substitute Security within 10 business days after notice from the Port.

(iv) The Port's failure to give notice of Developer's failure to comply with the DDA will not relieve Obligor of its obligations under this Guaranty.

(v) Promptly after receiving Substitute Security, the Port will cancel and return this Guaranty to Obligor.

4.4. **Tax Liability**. To the knowledge of the person signing this Guaranty on behalf of Obligor after reasonable and appropriate inquiry, Obligor has filed all required tax returns (federal, state, and local) and has paid all taxes, including all property taxes, interest, and penalties, due as of the date of this Guaranty, subject to future audits and good faith disputes. The charges, accruals, and reserves on Obligor's books for taxes or other governmental charges are expected to be adequate.

4.5. **Compliance with Laws**. Obligor has complied in all material respects with all laws, regulations, and requirements applicable to its business and has obtained all Regulatory Approvals from all Regulatory Agencies that are necessary for the transaction of its business.

5. DEFAULTS AND REMEDIES

5.1. Defaults. The occurrence of any of the following will be a default by Obligor under this Guaranty.

(a) Payment. Obligor fails to satisfy any Port demand for payment of a Guaranteed Obligation within the Secured Amount within 30 days after the Port delivers its notice and demand for payment to Obligor.

(b) Performance. Obligor fails to initiate steps to satisfy any Port demand for performance of a Guaranteed Obligation within the Secured Amount within 60 days after the Port delivers its notice and demand for performance to Obligor and, after the initial steps, fails to complete the required performance under this Guaranty.

(c) Substitute Security. Obligor fails to deliver Substitute Security within 10 days after the Port's notice.

5.2. Remedies.

(a) Payment Default. The Port may initiate an action against Obligor for the Port's actual damages arising from Obligor's default.

(b) Performance Default. The Port may initiate an action against Obligor for specific performance or actual damages, or both, arising from Obligor's default.

(c) Substitute Security Default. The Port's sole remedy for Obligor's failure to provide Substitute Security when required is an action against Obligor for specific performance.

(d) Provisions Governing Actions. *App ¶ 4 (Actions)* will apply to any actions that the Port files to enforce its remedies under this Guaranty.

(e) Nonbinding Arbitration. Either Obligor or the Port may submit any dispute over the interpretation or enforcement of this Guaranty to nonbinding arbitration using procedures in *DDA § 10.5 (Nonbinding Arbitration)*.

6. TERM OF GUARANTY

6.1. Termination.

(a) Generally. Subject to **Subsection (b)** (Survival of Covenants), **Subsection (c)** (Insolvency Proceedings), and **Subsection (d)** (Exhaustion of Secured Amount) of this Section, Obligor's liability under this Guaranty will terminate, and Obligor will be relieved of any further obligations under this Guaranty with respect to the Guaranteed Obligation, on the Loss Security End Date.

(b) Survival of Covenants. All covenants by Obligor in this Guaranty will be deemed to be material and will survive termination of any portion of the DDA if the Guaranteed Obligation arose before, but was not satisfied by, the applicable Termination Date.

(c) Insolvency Proceedings. If any person that has made payments to the Port for application to the Guaranteed Obligation is the subject of an Insolvency proceeding, the Guaranteed Obligation will survive until:

(i) the statute of limitations for the trustee or other party in an Insolvency proceeding may avoid any payment to the Port has run without an action for disgorgement being filed against the Port; or

(ii) if the Port has disgorged the avoided payment, whether or not a final judgment is entered, Obligor or another person has reimbursed the Port, including the Port's attorneys' fees and costs; or

(iii) the Guaranteed Obligation is fully satisfied.

(d) Exhaustion of Secured Amount. Obligor's liability under this Guaranty will terminate early if and on the date that Obligor has spent the Secured Amount on the Guaranteed Obligation before the Loss Security End Date.

6.2. Cancellation. Promptly after Obligor's request following termination of this Guaranty, the Port will cancel and return it.

7. GENERAL PROVISIONS

7.1. Standard Provisions and Rules of Interpretation. *App Part A (Standard Provisions and Rules of Interpretation)* is incorporated into this Guaranty by this reference.

7.2. Notices. *App ¶ 5 (Notices)* governs the procedures for delivery of notices, demand, and other communications between Obligor and the Port. Addresses for notice under this Guaranty are listed below.

Port:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Att'n: Byron Rhett, Director, Planning & Development

Telephone: (415) 274-0400
Facsimile: (415) 274-0495
Email:Byron.rhett@sfport.com

Port Attorney's Office
Port of San Francisco
Pier 1
San Francisco, CA 94111
Att'n: Eileen Malley, General Counsel

Telephone: (415) 274-0485
Facsimile: (415) 274-0494
Email Eileen.Malley@sfcityatty.org

Obligor:

With a copy to:

7.3. No Effect on DDA. Nothing in this Guaranty affects the respective rights and obligations of the Port and Developer under the DDA or the other Transaction Documents.

OBLIGOR:

____
a ________________________

By:
Name:
Title:

Executed on ______________________________.

DDA EXHIBIT C1

CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR

FINANCING PLAN

BETWEEN

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

AND

FC PIER 70, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

28-ACRE SITE

ELAINE FORBES, EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

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APPENDIX

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ATTACHMENTS

FP Exhibit A:	Form of Acquisition and Reimbursement Agreement
FP Exhibit B:	Form of Requisition
FP Exhibit C:	Form of Promissory Note-LP
FP Exhibit D:	Form of Promissory Note-X
FP Exhibit E:	RMA Term Sheet
FP Exhibit F:	Outline of Special Funds (to be added)
FP Schedule 1:	Summary Proforma
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FP Schedule 7:	Sample Shoreline Reserve/Project Reserve Division of Funds

Maps: Pier 70 SUD Public Financing Districts

[Remainder of page intentionally left blank.]

FINANCING PLAN

This **FINANCING PLAN** implements, is a part of, and is attached as **DDA Exhibit C1** to and incorporated into the Disposition and Development Agreement (the "**DDA**") between the City and County of San Francisco (including its agencies and departments, the "**City**"), acting by and through the San Francisco Port Commission (the "**Port**" or the "**Port Commission**"), and FC Pier 70, LLC ("**Developer**") (each, a "**Party**").

Initially capitalized and other terms are defined in the Appendix to Transaction Documents for the Pier 70 Mixed-Use Project (the "**Appendix**") or in other Transaction Documents as specified in the Appendix, which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents.

1. FINANCING OVERVIEW

1.1. Financing Plan Term.

(a) Effective Date. This Financing Plan, as part of the DDA, becomes effective on the Reference Date. Because certain financial obligations and rights will continue after the Port has issued SOP Compliance Determinations for all Horizontal Improvements at the 28-Acre Site, the Parties have agreed that this Financing Plan will have an independent termination date and continue in effect after the DDA Term ends, subject to *DDA § 12.9 (Effects of Termination on Project Payment Sources).*

(b) Termination. This Financing Plan will terminate when it has been fully performed by the following actions:

(i) the Port has conveyed all Development Parcels to Vertical Developers and Land Proceeds have been applied to the Project Payment Obligation or revenue-sharing;

(ii) the Port has satisfied the Project Payment Obligation;

(iii) the Port has set aside funding for the Pier 70 Shoreline Protection Facilities in the amount determined under **Subsection 4.7(f)** (Determining Pier 70 Shoreline Protection Facilities);and

(iv) revenue-sharing under this Financing Plan is complete.

1.2. Funding Goals. This Financing Plan establishes the contractual framework for financing horizontal development of the Project in accordance with the DDA and to achieve the following Funding Goals.

- Construct Horizontal Improvements in the FC Project Area in coordination with vertical development of the 28-Acre Site and minimize excess carrying costs of horizontal development.
- Use Public Financing Sources to leverage other sources and enhance the Port's ability to satisfy the Project Payment Obligation and each Party's anticipated share of Project Surplus.
- Provide Developer with the opportunity to achieve a market-rate Developer Return on its use of Developer Capital for Horizontal Development Costs.

- Provide the Port with the opportunity to achieve a market-rate Return on Port Capital on its use of Port Capital for Horizontal Development Costs.

- Meet affordable housing goals that San Francisco voters established as City policy by adopting Proposition F.

- Provide the Port with Fair Market Value for Parcel K North and each Option Parcel in compliance with AB 418.

- Use tax-exempt debt to the extent reasonably feasible, consistent with this Financing Plan and Governing Law and Policy.

- Protect the Parties' investments in Horizontal Improvements by providing a funding source for Ongoing Maintenance Costs.

- Provide a mechanism for San Francisco to adapt to rising sea levels and protect its land, residents, and businesses by financing Shoreline Protection Facilities, including Pier 70 Shoreline Protection Facilities, and other Port capital needs after full Project build-out.

- Implement sound and prudent municipal fiscal policies that protect the City General Fund, the Port Harbor Fund, and the City's and the Port's respective financial standings and fiduciary obligations, while operating in the constraints of this Financing Plan and Governing Law and Policy.

1.3. Overview of Financing Districts. As part of the Project Approvals, the Board of Supervisors indicated its intent to form the financing districts outlined in **FP Schedule 4** with anticipated boundaries as shown in attached Public Financing Maps. Each financing district is discussed in more detail in **Article 4** (Mello-Roos Taxes), **Article 6** (Tax Increment), and **Article 12** (Housing Tax Increment).

(a) Pier 70 Leased Property CFD. The Pier 70 Leased Property CFD at formation will cover certain Pier 70 Leased Property and include a Facilities CFD and a Services CFD. The CFD will consist of three Zones and a Future Annexation Area. Zone 1 will include all Development Parcels to be developed as NOI Property in Phase 1 other than Historic Building 12. Zone 2 will include all Development Parcels to be developed as NOI Property in future phases except Historic Building 21. Zone 3 will include Historic Building 12 and Historic Building 21.

(i) Facilities Special Taxes from all three Zones will be applied to:

(1) Capital Costs of the FC Project Area;

(2) PNLP Payments; and

(3) the Historic Building Feasibility Gap.

(ii) Shoreline Special Taxes from Zone 1 and Zone 2 will be applied as set forth in **Section 4.7** (Project Reserve and Shoreline Accounts).

(iii) A total of $20 million in the aggregate of Arts Building Proceeds from Zone 1 and Zone 2 of the Pier 70 Leased Property CFD and Zone 2 of the Pier 70 Condo CFD will be deposited into the Arts Building Account and applied

as described in **Section 10.2** (Arts Building Funding), to the extent of available funds.

(iv) The Future Annexation Area consists of Parcels E1, F, G, H1, H2, C1A and could include Parcel E4 or Parcel K South, or both, if the parcels cease to be used for the purposes specified in the DDA.

(v) The Pier 70 Leased Property CFD RMA will authorize the levy of Improvement Special Taxes on each Taxable Parcel in the Pier 70 Leased Property CFD. Under the RMA, the CFD will levy Improvement Special Taxes at different rates for Market-Rate Rental Projects and Taxable Commercial Parcels.

(vi) Improvement Special Taxes will be deposited into the following subaccounts of the Facilities Special Tax Fund of the Special Fund Trust Account that the Pier 70 Leased Property CFD will establish:

(1) the Capital Improvements Account, which will be used to pay Capital Costs and for any other use allowed under this Financing Plan;

(2) the Project Reserve Account with a portion of the Shoreline Special Taxes, for use as a reserve for Capital Costs and any other use allowed under this Financing Plan;

(3) the Arts Building Account, which will consist of a total of $20 million in the aggregate of Arts Building Proceeds from Zone 2 of the Pier 70 Condo CFD and Zone 1 and Zone 2 of the Pier 70 Leased Property CFD, to be used for the Noonan Replacement Space, Arts Building Funding, and community space, or to finance a public building on Parcel E4 if neither Developer nor the Arts Master Tenant builds out the parcel, as more fully described in **Article 10** (Arts Building); and

(4) the Shoreline Account with a portion of the Shoreline Special Taxes to fund Shoreline Adaptation Studies and, after the Shoreline Protection Project is approved, Shoreline Protection Facilities.

(vii) The Services CFD will levy Services Special Taxes on each Taxable Parcel in the Pier 70 Leased Property CFD to pay for Ongoing Maintenance Costs of the FC Project Area Maintained Facilities, which will consist of:

(1) Public Spaces in the FC Project Area;

(2) Public ROWs in the FC Project Area; and

(3) Shoreline Improvements in or adjacent to the FC Project Area.

(b) Pier 70 Condo CFD. The Pier 70 Condo CFD at formation will include Parcel K North and Parcels C1C, C2B, and D, which the Port will sell for development as Residential Condo Projects, and include a Facilities CFD and a Services CFD. The CFD will consist of two Zones and a Future Annexation Area. Zone 1 will consist of Parcel K North. Zone 2 will include all Residential Condo Projects in the 28-Acre Site. The Future Annexation Area will consist of Parcel E1, Parcel F, Parcel G, Parcel H1, Parcel H2, Parcel C1A, and could include Parcel E4 or Parcel K South, or both, if the parcels cease to be used for the purposes specified in the DDA.

(i) Facilities Special Taxes from both Zones in the Pier 70 Condo CFD (except as indicated below) will be applied to the following:

(1) the Michigan Street segment;

(2) the Historic Building Feasibility Gap;

(3) Capital Costs incurred in the horizontal development of the FC Project Area;

(4) PNLP Payments;

(5) Pier 70 Shoreline Protection Facilities (from Zone 2 only);

(6) Shoreline Adaptation Studies and Shoreline Protection Facilities; and

(7) payment of Promissory Note-X.

(ii) A total of $20 million in the aggregate of Arts Building Proceeds from Zone 2 of the Pier 70 Condo CFD and Zone 1 and Zone 2 of the Pier 70 Leased Property CFD will be deposited into the Arts Building Account and used for:

(1) the Noonan Replacement Space;

(2) Arts Building Funding; and

(3) community facilities; or

(4) a public building on Parcel E4 if neither Developer nor the Arts Master Tenant builds out the parcel.

(iii) Improvement Special Taxes levied in the Pier 70 Condo CFD will be deposited into the Capital Improvements Account and used for:

(1) the Michigan Street segment;

(2) Capital Costs; and

(3) any other use allowed under this Financing Plan.

(iv) Services Special Taxes from Zone 1 of the Pier 70 Condo CFD will pay the Ongoing Maintenance Costs of the Parcel K North Maintained Facilities, which will be:

(1) Public Spaces in Zone 1;

(2) Public ROWs in Zone 1;

(3) other Public Spaces outside of the FC Project Area and the 20th Street CFD;

(4) other Public ROWs in Pier 70 north of 20th Street and outside of the 20th Street CFD; and

(5) Shoreline Protection Facilities.

(v) Services Special Taxes from Zone 2 of the Pier 70 Condo CFD will pay the Ongoing Maintenance Costs of the FC Project Area Maintained Facilities, which will be:

(1) Public Spaces and Public ROWs in the FC Project Area; and

(2) Shoreline Improvements in and adjacent to the FC Project Area.

(c) Hoedown Yard CFD.

(i) The Hoedown Yard CFD will include a Facilities CFD and a Services CFD. Hoedown Yard CFD Proceeds will be used to finance:

(1) Irish Hill Park;

(2) acquisition of shoreline space near the former Hunters Point Power Plant; and

(3) other Port Capital Costs.

(ii) Services Special Taxes from the Hoedown Yard CFD will pay the Ongoing Maintenance Costs of the Hoedown Yard Maintained Facilities, which will be:

(1) Public Spaces in the Hoedown Yard CFD;

(2) Public ROWs in the Hoedown Yard CFD;

(3) other Public Spaces outside of the FC Project Area and the 20th Street CFD;

(4) other Public ROWs in Pier 70 north of 20th Street and outside of the 20th Street CFD; and

(5) Shoreline Protection Facilities.

(d) Sub-Project Areas G-2, G-3, and G-4. Sub-Project Area G-2 will correspond to Phase 1 of the Project. Sub-Project Area G-3 will correspond to Phase 2. Sub-Project Area G-4 will correspond to Phase 3.

(i) Appendix G-1 (Sub-Project Area G-1 (the Historic Core)) authorizes and Appendix G-2 (Sub-Project Areas G-2, G-3, and G-4) will authorize the IFD to use Allocated Tax Increment from all of the Sub-Project Areas in Project Area G to meet the Waterfront Set-Aside requirement under IFD Law on a Project Area G-wide basis rather than on a sub-project area basis.

(ii) Under Appendix G-2, the IFD will be authorized to pledge and use Project Tax Increment to pay eligible Capital Costs, which under Governing Law and Policy in effect on the Reference Date exclude Public Benefit Costs and Excess Return, and to pay Special Debt Service on Mello-Roos Bonds and debt service on Tax Increment Bonds issued to finance eligible Capital Costs for the FC Project Area.

(iii) Appendix G-2 will authorize the IFD to pledge and use HB Tax Increment from Historic Building 12 and Historic Building 21 to pay the Historic Building Feasibility Gap, to pay directly for Port Improvements at Pier 70 outside of the FC Project Area, and to pay Special Debt Service on Mello-Roos Bonds issued to finance the Historic Building Feasibility Gap.

(iv) Appendix G-2 will authorize the IFD to pledge and use Port Tax Increment to pay directly for Port Improvements at Pier 70 outside of the FC Project Area, and to pay debt service on Tax Increment Bonds issued to finance those Port Improvements.

(e) IRFD. The IRFD will cover the Hoedown Yard and public right-of-way bisecting it, which will be annexed to the IRFD after the City transfers it to the private developer. The IRFD Financing Plan authorizes the IRFD to use Allocated Housing Tax Increment to finance the Affordable Housing Projects in the 28-Acre Site and Parcel K South.

1.4. Summary Proforma.

(a) Contents. **FP Schedule 1** (Summary Proforma) contains the following key projections and estimates for each Phase and for the horizontal development as a whole:

(i) Developer's Entitlement Sum and line item estimates by category;

(ii) Developer's Site Preparation costs by line item;

(iii) application of Developer Capital and each other anticipated source, including Advances of Land Proceeds, to other Horizontal Development Costs;

(iv) accrual of Developer Return on Entitlement Costs, costs of Site Preparation, and other Horizontal Development Costs (sample calculations and formulas for Cumulative IRR are shown in **FP Schedule 2**);

(v) accrual of Interest on Land Proceeds;

(vi) the market value of each Option Parcel assuming entitlements are in place, also referred to as Land Value Indicators;

(vii) the market value of Parcel K North assuming entitlements are in place;

(viii) the rehabilitation costs and amounts of the Historic Building Feasibility Gaps for Historic Building 12 and Historic Building 21;

(ix) the Arts Building Funding;

(x) the funding gap for the Affordable Housing Projects;

(xi) levy and allocation of Mello-Roos Taxes;

(xii) growth and allocation of Project Tax Increment;

(xiii) bonding capacity for the Project; and

(xiv) Project Surplus available for revenue-sharing.

(b) Assumptions. The Proforma incorporates certain assumptions that informed the drafting of this Financing Plan. Proforma assumptions include the following:

(i) Financing districts described in this Financing Plan will be established and Tax Revenues from each district will be available for their authorized uses.

(ii) The Board of Supervisors will amend the City's Special Tax Financing Law to authorize all uses of Facilities Special Taxes described in this Financing Plan.

(iii) Development Parcels will be developed for both residential and commercial-office uses at densities described as the "*Mid-Point Project*" in the Land Use Plan and Design for Development.

(iv) Two Development Parcels in the 28-Acre Site and Parcel K South will be designated for Affordable Housing Projects. As described in **Article 12** (Housing Tax Increment) and in the Affordable Housing Plan, the financing sources for these parcels will include 28-Acre Site Affordable Housing Fees, 28-Acre Site Jobs/Housing Equivalency Fees, and Housing Tax Increment.

(v) Entitlement Costs on the 28-Acre Site will be paid by early Project Payment Sources expected to consist of a combination of Early Mello-Roos Bond Proceeds and an Advance of Land Proceeds from the Port's sale of Parcel K North.

(vi) The Port will convey Option Parcels in fee or by ground lease for Fair Market Value determined under *DDA art. 7 (Parcel Conveyances)*.

(vii) If Developer exercises its Option for an Option Parcel, Developer or a Vertical Developer Affiliate will enter into a Vertical DDA in the form of

DDA Exh D2, which will specify the ground rent or purchase price payable for the Option Parcel on terms described in this Financing Plan.

(viii) If Developer does not exercise its Option for an Option Parcel, the Port will issue a Public Offering for the parcel in accordance with *DDA § 7.5 (Public Offering Procedures)*.

(ix) The Port will coordinate with the City to issue Mello-Roos Bonds on behalf of each CFD for the applicable Phase and use the proceeds to pay Capital Costs and Developer pass-throughs based on the approved Phase Budget.

(x) Advances of Land Proceeds and Public Financing Sources, when available, will be preferred over Developer Capital or Port Capital to pay the costs of Phase Improvements.

(xi) Whenever the Project Payment Obligation for a Current Phase includes both a Developer Balance and a Port Balance, Developer and the Port will be paid by available Project Payment Sources as specified in **Subsection 2.4(f)** (Priorities for Payment) and **Subsection 2.4(g)** (Pro Rata Payments).

(xii) Under the Governing Law and Policy in effect on the Reference Date, pay-as-you-go Facilities Special Taxes, proceeds of Mello-Roos-only Bonds, Advances of Land Proceeds, and, at the Port's sole discretion, Port Capital Advances, are the only Project Payment Sources that the Port expects to use to reimburse Developer for its Public Benefit Costs.

(c) Future Events.

(i) Both Parties acknowledge that the Proforma is illustrative only, and future events that do not conform to Proforma assumptions will not provide the applicable Party with a unilateral right to:

(1) disapprove a payment based solely on a difference between actual costs and estimated costs in the Proforma;

(2) disapprove a payment based solely on a difference between actual revenues and estimated revenues in the Proforma;

(3) demand payment for estimated costs in the Proforma that Developer did not actually incur;

(4) demand payment if estimated revenues in the Proforma exceed actual revenues or are not available when projected;

(5) amend this Financing Plan; or

(6) terminate the DDA.

(ii) The Parties agree that the Port may reasonably rely on the updated proforma that Developer submits for a Phase to determine whether to make a Port Capital Advance in that Phase and to size any requests that the City issue Bonds under this Financing Plan.

(iii) To the extent that horizontal development varies from Proforma assumptions, certain provisions of this Financing Plan will no longer apply and will be deemed severed from this Financing Plan.

1.5. Payment Sources for FC Project Area. This section provides an overview of the Project Payment Sources for the Entitlement Sum and other Capital Costs of the Project and the treatment of those sources, subject to more detailed conditions in this Financing Plan.

(a) General Principle. Governing Law and Policy will prevail over any conflict with this Financing Plan or any other part of the DDA relating to Project Payment Sources.

(b) Mello-Roos Bond Proceeds. Mello-Roos Bonds secured and payable by Facilities Special Taxes or Project Tax Increment, or both, will be the preferred public financing approach for a significant amount of the Phase Improvement Costs.

(c) Port and Other Sources.

(i) Advances of Land Proceeds and Public Financing Sources are the only sources that the Port is required to apply to the Project Payment Obligation.

(ii) The Port in its sole election may elect to use Port Capital Advances to pay Capital Costs and Developer pass-throughs when Public Financing Sources are not available and, once committed through a Phase Approval process, the Port must use the amount committed.

(iii) The Parties may agree to use additional sources that become available under conditions specified in **Section 1.7** (Additional Sources).

(d) Developer Capital.

(i) Developer has used and will use Developer Capital to pay for Entitlement Costs and other Horizontal Development Costs when Land Proceeds, Port Capital, and Public Financing Sources are not available.

(ii) The Port will make progress payments from time to time on behalf of the Acquiring Agencies in accordance with this Financing Plan and the Acquisition Agreement.

(e) Pier 70 Leased Property CFD Improvement Special Taxes. Improvement Special Taxes from the Pier 70 Leased Property CFD will fund, in no particular order:

(i) the Entitlement Sum;

(ii) Public Benefit Costs (using pay-as-you-go Facilities Special Taxes only);

(iii) other Capital Costs;

(iv) Noonan Replacement Space, Arts Building Funding, and community facilities, or a public building on Parcel E4 if neither Developer nor the Arts Master Tenant builds out Parcel E4, using Arts Building Proceeds from Zone 1 and Zone 2 only under the conditions specified in **Section 10.2** (Arts Building Funding);

(v) the Historic Building Feasibility Gap as specified in **Section 11.1** (Subsidy for Historic Buildings 12 and 21);

(vi) PNLP Payments;

(vii) Shoreline Adaptation Studies and Shoreline Protection Facilities; and

(viii) Pier 70 Shoreline Protection Facilities.

(f) Pier 70 Condo CFD Improvement Special Taxes. Improvement Special Taxes from the Pier 70 Condo CFD will fund, in no particular order:

(i) the Michigan Street segment;

(ii) the Entitlement Sum;

(iii) Public Benefit Costs;

(iv) other Capital Costs;

(v) Noonan Replacement Space, Arts Building Funding, and community facilities, or a public building on Parcel E4 if neither Developer nor the Arts Master Tenant builds out the parcel, using Arts Building Special Taxes from Zone 2 only under conditions specified in **Section 10.2** (Arts Building Funding);

(vi) the Historic Building Feasibility Gap;

(vii) PNLP Payments;

(viii) Pier 70 Shoreline Protection Facilities (Improvement Special Taxes from Zone 2 of the Pier 70 Condo CFD only);

(ix) Shoreline Adaptation Studies and Shoreline Protection Facilities; and

(x) payment of Promissory Note-X.

(g) Project Tax Increment. Subject to the Interest Cost Limitation, Allocated Project Tax Increment and proceeds of Bonds secured and payable by Project Tax Increment will fund, in no particular order:

(i) the Entitlement Sum;

(ii) other eligible Capital Costs, which exclude Public Benefit Costs and Excess Return under the Governing Law and Policy in effect on the Reference Date;

(iii) the Historic Building Feasibility Gap;

(iv) PNLP Payments;

(v) Pier 70 Shoreline Protection Facilities; and

(vi) Special Debt Service and the Leased Property Backup Fund.

(h) Port Tax Increment. Subject to the Interest Cost Limitation, Allocated Port Tax Increment and proceeds of Bonds secured and payable by Port Tax Increment will fund, in no particular order:

(i) Irish Hill Park;

(ii) Port Improvements; and

(iii) Special Debt Service on Bonds issued to finance the Historic Building Feasibility Gap solely on the conditions specified in **Article 11** (Historic Buildings).

1.6. Other Sources and Costs. This Section provides an overview of the Parties' agreement as to public sources for other Improvements in the SUD and the treatment of those sources, subject to more detailed conditions specified elsewhere in this Financing Plan.

(a) Historic Building Feasibility Gap. The Port will apply Port Tax Increment from Historic Building 12 and Historic Building 21 and proceeds of Bonds secured and payable by Port Tax Increment from those Historic Buildings to finance the Historic Building Feasibility Gap as described in **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service).

(b) 20th/Illinois Plaza. The 20th/Illinois Plaza will be an obligation of the Vertical Developer that the Port selects to develop Parcel K North. The construction costs of these Improvements will be treated as an Advance of Land Proceeds under **Subsection 7.4(a)** (Parcel K North).

(c) Waterfront Set-Aside. Under the IFD Law, the Port will apply Allocated Tax Increment from Sub-Project Area G-1, Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4 to fund Improvements required by the IFD Law.

(d) Interim Lease Revenues. The Port will apply the amount of Interim Lease Revenues reported as Percentage Rent under the Master Lease as a credit toward Land Proceeds. The Port may use these credited amounts as applicable to:

(i) make Advances of Land Proceeds in accordance with **Section 7.3** (Advances of Land Proceeds) to satisfy any outstanding Project Payment Obligation; and

(ii) for revenue sharing by the Developer Share and the Port Share.

(e) Master Marketing Fee Account. Although the Port has no proprietary interest in the Master Marketing Fees that Developer will collect from all Vertical Developers, the Parties have agreed that each Vertical Developer will deposit its initial payment into Escrow. The fees will be disbursed from Escrow to a segregated account to be held by the Special Fund Trustee. In turn, the Special Fund Trustee will disburse fees to Develop in accordance with and subject to conditions in each Vertical Developer's Vertical DDA.

1.7. Additional Sources.

(a) Cooperation. The City, the Port, and Developer will cooperate to identify additional sources and incentives that might be available for Improvements at the FC Project Area, such as incentives for historic rehabilitation, brownfield remediation, transit-oriented development, and sustainable development.

(b) Conditions to Other Sources. The Parties must agree to use any permitted source that is not identified in this Financing Plan as a Project Payment Source for Capital Costs. Any potential new source other than Port Capital that meets all of the following conditions will be deemed to be permitted if it:

(i) is less costly than Developer Capital;

(ii) does not materially increase the Capital Cost;

(iii) does not increase the time for implementation, cost, or financing of any Phase;

(iv) does not impose additional regulations and restrictions that are inconsistent with this Financing Plan or the DDA;

(v) does not require the Improvements to be made out of sequence with the Phasing Plan in effect when the funds would be available if resequencing would cause a material cost increase;

(vi) does not result in lower residual values for Option Parcels; and

(vii) does not impose requirements that would create a material negative impact on Developer's ability to market and transfer the Development Parcels.

(c) Horizontal Development Costs. Administrative costs and additional work required by accepting a new source to be applied to Capital Costs will be Hard Costs or Soft Costs recorded on the Developer Capital Schedule or Port Capital Schedule as applicable.

1.8. Limitation on Sources. Developer acknowledges that none of the following is a Project Payment Source to pay or secure and pay Bonds issued to pay Capital Costs under any circumstances not specified in this Financing Plan:

(a) City General Fund;

(b) Port Harbor Fund other than Land Proceeds and any Port Capital that the Port commits to use;

(c) Improvement Special Taxes deposited in the Shoreline Account or special taxes collected from outside of the Pier 70 Leased Property CFD or the Pier 70 Condo CFD;

(d) Port Tax Increment in the Special Fund Trust Account holding Port Tax Increment (except to the extent described in **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service));

(e) Housing Tax Increment; or

(f) Tax Increment from outside of the Sub-Project Areas, except to fund the Waterfront Set-Aside.

1.9. Special Fund Accounts. Schedule 4 lists each Project Payment Source other than Port Capital described in this Financing Plan and specifies the authorized uses of each source. The Port will enter into a Special Fund Administration Agreement with the Special Fund Trustee with directions to establish segregated accounts for each specific purpose, without prejudice to the Port's right to revise these directions for convenience or efficiency. Changes affecting Mello-Roos Taxes or Tax Increment from the 28-Acre Site and Parcel K North will be subject to Developer's prior consent until the Project Payment Obligation and Promissory Note-LP have been fully paid.

1.10. Due Diligence Related to Public Financing. The Parties agree as follows.

(a) Compliance with Law. Before spending any Public Financing Sources, the Port and the City will consult with the City's Bond Counsel to confirm that the expenditure is authorized under CFD Law, IFD Law, IRFD Law, or the Tax Code, as applicable.

(b) Record-Keeping. Consistent with **Article 9** (Reporting), each Party will keep appropriate records of expenditures of Advances of Land Proceeds, Developer Capital, and Advances of Port Capital (including descriptions of financed Improvements, dates of original expenditures and dates on which Improvements are placed in service) that they expect to be reimbursed from Public Financing Sources to assist with Bond Counsel's review.

2. FLOW OF FUNDS

2.1. Port Payments. References in any Transaction Document to Port payments or disbursements will mean any of the following funds of the Port, any CFD, the IFD, or the IRFD that are applied as described in this Financing Plan:

(a) Land Proceeds from Parcel K North and the 28-Acre Site that the Port uses to make Advances of Land Proceeds to the Pier 70 CFDs to pay Capital Costs and Developer pass-throughs, which Escrow Agents will disburse from Escrow Accounts as specified in Joint Escrow Instructions in accordance with **Subsection 2.4(f)** (Priorities for Payments);

(b) Port Capital that the Port uses to make Port Capital Advances to the Pier 70 CFDs to pay Developer's Capital Costs and Developer pass-throughs;

(c) Mello-Roos Taxes that the Special Fund Trustee disburses from the applicable segregated account in the Facilities Special Tax Fund to pay Capital Costs, Developer pass-throughs, or the Historic Building Feasibility Gap;

(d) Project Tax Increment that the Special Fund Trustee disburses from the applicable segregated account in the Tax Increment Fund to pay Capital Costs, Developer pass-throughs, or the Historic Building Feasibility Gap;

(e) Bond Proceeds that an Indenture Trustee disburses from the applicable Capital Improvement Account under an Indenture to pay Capital Costs (subject to the Interest Cost Limitation, if applicable), Developer pass-throughs, Promissory Note-LP,

and Promissory Note-X (from Mello-Roos-only Bonds), or the Historic Building Feasibility Gap;

(f) Interim Satisfaction Balance that the Special Fund Trustee disburses from the Revenue Account or as otherwise set forth in this Financing Plan;

(g) Project Surplus that the Special Fund Trustee disburses from the Revenue Account after the Final Audit;

(h) Housing Tax Increment that the Special Fund Trustee disburses to or as requested by MOHCD; and

(i) Port Tax Increment that the Special Fund Trustee disburses from the applicable segregated account in the Tax Increment Fund to pay Special Debt Service on Bonds issued to finance the Historic Building Feasibility Gap.

2.2. Payment Requests and Requisitions.

(a) Payment Requests. The Port will reimburse Developer for its Capital Costs related to Phase Improvements in accordance with Approved Payment Requests that Developer will obtain in accordance with the Acquisition Agreement.

(i) As specified in more detail in *AA art. 4 (Payment Requests)*, Developer will prepare each Payment Request in the form of *AA Exh C (Payment Request)*, number each successive Payment Request in ascending order, attach supporting documents, and submit the Payment Request package to the Chief Harbor Engineer, who will distribute copies for review to the extent necessary under the ICA and to any construction consultant engaged by the Port.

(ii) After the Chief Harbor Engineer, in consultation with the construction review consultant, determines that a Payment Request is complete, he will arrange for each applicable Acquiring Agency to inspect and approve the Phase Improvements covered by the Payment Request. The Chief Harbor Engineer will forward each Approved Payment Request promptly to the Port Finance Director. Each Approved Payment Request will authorize the use of Project Payment Sources to pay the Acquisition Price of Horizontal Improvements (or their Components) listed in the Approved Payment Request in accordance with this Financing Plan.

(b) Requisitions. The Port will reimburse Developer for Horizontal Development Costs (other than those covered by the Entitlement Cost Statement and Approved Payment Requests) with Developer Return in accordance with Approved Requisitions that Developer will obtain in accordance with this Subsection. Developer will prepare each Requisition in the form of **FP Exhibit B**, number each successive Requisition in ascending order, attach supporting documents, and submit the Requisition package to the Port Finance Director. The Port Finance Director will review Requisitions for completeness and give notice to Developer of her approval or disapproval.

(c) Numbering and Priority. The Port Finance Director will assign priority to each Approved Payment by the date of approval by numbering it in ascending order. Subject to **Subsection 2.4(f)** (Priorities for Payment), the Approved Payments will have priority for payment in ascending order.

(d) Directions to Disburse. As Project Payment Sources become available, the Port Finance Director will provide written directions to each applicable Payment Agent for disbursement of funds to pay Approved Payments in accordance with **Subsection 2.4(d)** (Payments from Project Payment Sources).

(e) Revenue Sharing. The Port is obligated to make or direct distributions for revenue-sharing in accordance with this Financing Plan. Because revenue-sharing does not pay for Horizontal Development Costs, Developer is not required to submit Payment Requests or Requisitions for any form of revenue-sharing under this Financing Plan.

(f) Discretion Regarding Procedures. Each Party will retain discretion to suggest, accept, or reject changes in procedures regarding review, approval, and disbursements under this Financing Plan. To the extent that any suggested change affects procedures in the ICA, each affected Acquiring Agency must also approve the change before the Parties may begin to implement the changes. This Subsection does not permit the Parties to make substantive changes to Developer's or the Port's reimbursement rights or payment obligations under this Financing Plan.

(g) Repayment of Port Capital. When Developer submits a Payment Request under **Subsection 2.2(a)** (Payment Requests) or a Requisition under **Subsection 2.2(b)** (Requisitions), the Port Finance Director will determine if a Port Balance exists and, if it does, direct the Special Fund Trustee to disburse available Project Payment Sources to both the Developer (or the party receiving a Developer pass-through) and the Port in accordance with this Financing Plan.

2.3. Entitlement Costs.

(a) Entitlement Cost Statement.

(i) Up to the Reference Date, Developer spent Developer Capital on Entitlement Costs. Developer Return on Developer's Entitlement Costs began to accrue on the later of July 12, 2011, or the date on which Developer incurred the costs. Developer's Preliminary Entitlement Cost Statement is attached as **FP Schedule 3** showing Developer's line item breakdown of: (1) Entitlement Costs; and (2) Developer Return accrued on each line item of Entitlement Costs for the period ending about 90 days before the Reference Date, with estimates up to the Reference Date.

(ii) Developer must provide its updated Entitlement Cost Statement to the Port for review and approval no later than 60 days after the Reference Date. The approved Entitlement Cost Statement will be an Approved Payment under this Financing Plan. The Port will be obligated to pay the amount of the Entitlement Sum reflected in the approved Entitlement Cost Statement under this Section, subject to **Subsection 2.3(b)** (Project Payment Sources for Entitlement Costs).

(iii) Developer Return will accrue on the unpaid balance of the Entitlement Sum from the Reference Date until the date the Entitlement Sum is fully paid.

(b) Project Payment Sources for Entitlement Costs.

(i) IFD Law imposes the Interest Cost Limitation on the use of Tax Increment that also applies to any Bonds secured and payable by Tax Increment.

(ii) The Interest Cost Limitation does not apply to Land Proceeds, Mello-Roos Taxes, and proceeds of Mello-Roos-only Bonds. The Port will apply Advances of Land Proceeds, Improvement Special Taxes from the Pier 70 CFDs (including amounts in the Project Reserve Account), and proceeds of Mello-Roos-only Bonds to pay Excess Return until paid in full before applying those sources to any other part of the Entitlement Sum.

(c) Payment Process.

(i) The Port's escrow instructions will direct the Escrow Agent to make an Advance of Land Proceeds to the Pier 70 CFDs by disbursing Parcel K North Proceeds to Developer unless **clause (v)** of **Subsection 7.4(a)** (Parcel K North) applies.

(ii) The amount of the disbursement will be the lesser of: (1) Parcel K North Proceeds; and (2) the outstanding Developer Balance. Any Parcel K North Proceeds in excess of the Developer Balance will be deposited into the Land Proceeds Fund for application to Capital Costs.

(iii) Concurrently with the disbursement under this Subsection, the Port will enter the date of its Advance of Land Proceeds and the amounts applied to Entitlement Costs and Allowed Developer Return on the allonge to Promissory Note-LP. The Port will also enter the amount applied to Excess Return on the allonge to Promissory Note-X.

(iv) If the Entitlement Sum is not fully paid by the disbursement under this Subsection, the Port will authorize the disbursements of other Project Payment Sources to Developer under **Subsection 2.2(d)** (Directions to Disburse), subject to the Interest Cost Limitation if applicable, as Project Payment Sources become available until the unpaid balance of the Entitlement Sum and accrued Developer Return are paid.

(v) In the alternative, if the Entitlement Sum is not fully paid by Pier 70 CFD Proceeds, the Port will have the right, but will in no event be obligated, to make a Port Capital Advance to the Pier 70 CFDs to pay any remaining balance. If the Port does so, the Port will make a contemporaneous entry on the Port Capital Schedule that specifies the date of the Advance and the amounts applied to the Entitlement Sum, Allowed Developer Return, and Excess Return.

(vi) Contemporaneously with each disbursement under this Section, Developer will make corresponding entries on the Developer Capital Schedule that specify the date of the disbursement and the amounts applied to the Entitlement Sum, Allowed Developer Return, and Excess Return.

2.4. Horizontal Development Costs.

(a) Allocation of Developer's Costs. To comply with Governing Law and Policy, including Tax Code provisions relating to tax-exempt debt, the Parties will review Horizontal Development Costs to determine eligibility for reimbursement from Public Financing Sources and tax-exempt proceeds of Public Financing Sources. Examples of the Parties' preliminary conclusions follow.

(i) Costs to demolish existing structures to clear the 28-Acre Site for horizontal development would be eligible for tax-exempt financing.

(ii) Costs of Utility Infrastructure, Public ROWs, Public Spaces, Transportation Infrastructure, Shoreline Improvements, and Shoreline Adaptation Studies would be eligible for tax-exempt financing.

(iii) Because Entitlement Costs and any Site Preparation Costs supporting vertical development may not be eligible for financing under CFD Law, IFD Law, or IRFD Law, or if eligible under those laws, may not be eligible for tax-exempt financing under the Tax Code, the Parties will consult with the City's Bond Counsel prior to the issuance of Bonds.

(b) Developer Cash Flow in each Quarter.

(i) Developer will account for its use of Developer Capital in each Developer Quarterly Report, which must update Developer's spending on Phase Improvement Costs by Phase and provide prior notice when Developer expects Phase Improvement Costs to reach or exceed the applicable Phase Budget.

(ii) Developer must record its use of Developer Capital for Phase Improvement Costs on the Developer Capital Schedule, which must be updated and attached to each Developer Quarterly Report. Developer must record on the Developer Capital Schedule the date and amount of funds received and applied to the Developer Balance. The Developer Schedule must include sufficient detail about expenditures (including a description of the expenditures, the date of the expenditure and the date on which the related Horizontal Improvement is placed in service) for the City and the Port (including the Port Finance Director and Bond Counsel) to determine the appropriate Project Payment Source to reimburse an expenditure.

(c) Port Capital Advances. The Port must record each Port Capital Advance on the Port Capital Schedule, which must be updated and attached to its next Port Quarterly Report. The Port must record on the Port Capital Schedule the date and amount of funds received and applied to the Port Balance. The most recently updated Port Capital Schedule will serve as the Port's Payment Request whenever **Subsection 2.4(g)** (Pro Rata Payments) applies.

(d) Payments from Project Payment Sources.

(i) As described in **Section 2.2** (Payment Requests and Requisitions), Developer must submit Payment Requests and Requisitions to the Port from time to time for Capital Cost payments. The Port Director will disburse funds in accordance with this Subsection for any portion of the Entitlement Sum not fully paid with Developer Return under **Section 2.3** (Entitlement Costs) and other Approved Payments.

(ii) The Port Finance Director will review and annotate each Approved Payment, if not already specified, for:

(1) costs that are subject to restrictions or limitations under this Financing Plan or Governing Law and Policy; and

(2) applicable priorities.

(iii) As any Project Payment Source becomes available, the Port Finance Director will identify the unpaid Approved Payments for eligible uses of the available funds under Governing Law and Policy in ascending order of priority as specified in **Subsection 2.4(f)** (Priorities for Payment), then annotate those to be paid:

(1) to update Capital Costs to the date of calculation by reference to the most recent Developer Quarterly Report and, if applicable, Port Quarterly Report, with separate calculations for Allowed Return and Excess Return accrued to the date of calculation with daily accrual rates to be added when the disbursements are actually made;

(2) amounts eligible for payment from any tax-exempt Bond Proceeds; and

(3) amounts eligible for payment from any other Public Financing Sources.

(iv) Whenever she is asked to approve disbursements for Developer Return, the Port Finance Director will be entitled to receive information about the related costs to ensure that the disbursement is paid with the appropriate Project Payment Sources.

(v) The Port Finance Director will direct disbursements by signing, dating, and delivering copies of the signed Approved Payments as appropriate to the applicable Payment Agents, with copies to Developer, the CFD Agent, and the IFD Agent as applicable.

(vi) Contemporaneously with each disbursement under this Financing Plan, the Parties will make corresponding entries on the Developer Capital Schedule, the Port Capital Schedule, and the allonges, as applicable.

(e) Progress Payments. Approved Payments that the Port Finance Director delivers to any Payment Agent will authorize the Payment Agent to make monthly progress payments when additional funds that it holds for disbursement in accordance with this Financing Plan become available. Each Payment Agent will document progress payments in accordance with the record-keeping requirements of its applicable Escrow Instructions, Special Fund Administration Agreement, or Bond Indenture.

(f) Priorities for Payment. The following priorities will apply to the disbursement of Project Payment Sources unless the Parties agree otherwise by a countersigned writing.

(i) The Entitlement Cost Statement, as updated under **Subsection 2.3(a)** (Entitlement Cost Statement), and accrued Developer Return on the Entitlement Sum will have the highest priority for payment.

(ii) Other Approved Payments will have priority designated by the Port Director's numbering, subject to adjustments as needed for Project Funding Sources, which include the following.

(1) Whenever tax-exempt Bond Proceeds are available, priority will be given to PNLP Payments to the extent necessary to comply with Treasury Regulation section 1.150-2, which requires costs to be

reimbursed no later than 18 months after the later of: (A) the date of the expenditure; or (B) or the date the project is placed in service up to a maximum of three years after the expenditure. PNLP Payments will be deposited in the Land Proceeds Fund until the Project Payment Obligation is satisfied.

(2) Whenever pay-as-you-go Improvement Special Taxes from Zone 1 or Zone 2 of the Pier 70 Leased Property CFD, pay-as-you-go Improvement Special Taxes from the Pier 70 Condo CFD, or Mello-Roos only Bond Proceeds are available, priority will be given to payments of Excess Return regardless of the priority of the Approved Payment under **Section 2.2** (Payment Requests and Requisitions). This Paragraph does not affect the priority of payments under Promissory Note-X, which remains subordinate to satisfaction of the Project Payment Obligation and Promissory Note-LP.

(3) Payments of Excess Return may be deferred if the only available funds are subject to the Interest Cost Limitation, regardless of the priority assigned to the cost on which the Excess Return is accruing. If Allowed Return is fully paid by available funds, the Excess Return will continue to accrue until fully paid.

(4) Arts Building Proceeds, Historic Building Proceeds, Hoedown Yard CFD Proceeds, Pier 70 CFD Proceeds, and Shoreline Special Taxes will be applied only as specified in this Financing Plan.

(5) Port Tax Increment will be applied to costs for the 28-Acre Site Project only as specified in this Financing Plan

(6) Specified priorities for the application of Project Payment Sources in this Financing Plan will be applied regardless of the relative priorities of the pertinent Approved Payments.

(7) Costs that may be reimbursed by the same Project Payment Source will be paid according to the relative priorities of the Approved Payments absent any other priority or limitation specified in this Financing Plan.

(iii) The Historic Building Feasibility Gap for Historic Building 12 and for Historic Building 21 will be paid at the time and in the manner set forth in **Article 11** (Historic Buildings).

(iv) This clause applies if a Developer Balance is outstanding and the Port Balance is zero when the Port commits to making a Port Capital Advance under **Section 7.5** (Treatment of Port Capital Advances). The pre-existing Developer Balance must be satisfied by Project Payment Sources, which may include the Port Capital Advance, before **Subsection 2.4(g)** (Pro Rata Payments) applies.

Example: Assume the Port Balance is zero and the Developer Balance is $30 million when the Port commits to make a Port Capital Advance of $10 million by paying a portion of the Developer Balance down to $20 million on 1/1/19. After the Port Capital Advance, Developer expends an additional $10 million, then Project Payment

Sources become available. The Project Payment Sources would be applied in the following priority: (1) payment in full of the pre-existing Developer Balance on 1/1/19, plus Developer Return to the date of payment; and (2) payment of the Developer Balance ($10 million plus Developer Return) and the Port Balance ($10 million plus Return on Port Capital) pro rata under **Subsection 2.4(g)** (Pro Rata Payments).

(v) Subject to **clause (iv)** of this Subsection, after the Port makes a Port Capital Advance, Project Payment Sources will be applied to the Developer Balance and the Port Balance by pro rata payments as described in **Subsection 2.4(g)** (Pro Rata Payments).

(vi) To the extent that a Developer Balance and a Port Balance are not satisfied by Project Payment Sources available during a Current Phase, the priorities for paying each Party's balance will be preserved by the priority of the previously Approved Payment Requests.

(vii) After the Developer Balance and the Port Balance are satisfied, the Interim Satisfaction Balance in a Current Phase will be available for revenue-sharing if the conditions specified in **Section 3.6** (Interim Satisfaction) are satisfied.

(viii) The Pier 70 CFDs and the IFD (due to its pledge of Project Tax Increment to debt of the Pier 70 CFDs) will make payments on Promissory Note-LP until fully paid only after the Project Payment Obligation is satisfied in full, except when **paragraph 1** of **clause (ii)** of **Subsection 2.4(f)** (Priorities for Payment) applies.

(ix) After the Project Payment Obligation and Promissory Note-LP are paid in full, the Pier 70 CFDs will pay Promissory Note-X.

(g) Pro Rata Payments. Except as specified in **clause (iv)** of **Subsection 2.4(f)** (Priorities for Payment), whenever payment obligations under this Financing Plan include both a Developer Balance and a Port Balance, those obligations will be paid pro rata, based on proportionate values of the Developer Balance and the Port Balance, as shown in the illustrative examples in **FP Schedule 6**. Funds will be applied to any outstanding accrued return on capital before application to the capital balances.

2.5. Trust Account for Special Funds. The Port, in its proprietary capacity and as CFD Agent, IFD Agent, and IRFD Agent, will enter into a Special Fund Administration Agreement with the Special Fund Trustee under which the Special Fund Trustee will hold and administer in a Special Fund Trust Account segregated accounts described in this Financing Plan for disbursement.

2.6. Certain Costs Incurred by Vertical Developers. If Developer does not reimburse Vertical Developers for the following costs, subject to treatment as a Capital Cost under this Financing Plan, the Port will enter into reimbursement agreements with Vertical Developers obligated to provide the following Public Benefit Costs under procedures similar to those described in the Acquisition Agreement and this Financing Plan to comply with the CFD Law. Vertical Developer will not be entitled to any other reimbursement under this Financing Plan except for costs associated with Deferred Infrastructure as described in **Subsection 3.1(b)** (Deferred Infrastructure).

(a) Arts Building. Under *DDA § 7.12 (Arts Building)*, Developer will designate a Vertical Developer Affiliate to develop an Arts Building for uses consistent with the SUD provisions at Section 249.79 and the Arts Program (*DDA Exh B6*). The Port has agreed to subsidize the Arts Building with Arts Building Proceeds on conditions and in amounts specified in **FP § 10.2** (Arts Building Funding).

(b) Noonan Replacement Space. *DDA § 7.13 (Noonan Replacement Cost)* requires Developer to provide Temporary Noonan Replacement Space and Permanent Noonan Replacement Space to the Noonan Tenants. **FP § 10.2** (Arts Building Funding) specifies the amounts of Arts Building Proceeds that will be available to fund the Permanent Noonan Replacement Space, depending on whether it is located in the Arts Building or elsewhere in the 28-Acre Site. Under circumstances specified in *DDA § 7.23 (Potential Relocation of Building 11)*, the Port and Developer, each in its sole discretion, may agree to apply Arts Building Proceeds to implement the Building 11 Relocation Plan, subject to prior authorization by the Port Commission and the Board of Supervisors.

(c) Historic Buildings 12 and 21. Developer is required to rehabilitate Historic Building 12 and Historic Building 21 under *DDA § 7.14 (Historic Buildings 12 and 21)*. The Port has agreed to subsidize the designated Vertical Developer Affiliate's costs with Public Financing Sources generated by those buildings, as described in **FP art. 11** (Historic Buildings).

(d) Rooftop Open Space. Under conditions specified in *DDA § 7.15 (Rooftop Open Space)*, the Port may request that Developer include in its Phase Submittal for Phase 3 a location for Rooftop Open Space on an Option Parcel. The pertinent Vertical Developer will not be required to build the Rooftop Open Space unless the Port is able to demonstrate that Public Financing Sources will be available to finance the costs associated with the Rooftop Open Space.

2.7. Special Facility Designation.

(a) Port Revenue Bonds. The Port previously issued Port Revenue Bonds secured and payable by a pledge of Port revenues under the Port Master Indenture. As defined in the Port Master Indenture, pledged Port revenues specifically exclude revenues pledged to repay financing for public facilities that have been designated by the Port as "Special Facilities."

(b) Designation and Effect. The Port hereby designates the SUD as a Special Facility and declares revenues from and with respect to the SUD, including Land Proceeds and Project Surplus, to be Special Facility Revenue pledged to pay Special Facility Revenue Bonds. As a result, the Port revenues from and with respect to the SUD are not "Revenue" subject to and as defined in the Port Master Indenture.

(c) Condition to Issuance of Bonds Payable from Allocated Tax Increment. Before issuing any Mello-Roos Bonds that are payable from Allocated Tax Increment or Tax Increment Bonds, the Port will file with the trustee for the Port Revenue Bonds the certificate, opinion, and report required by the Port Master Indenture.

2.8. Port FY Budget. Each Phase Approval and any amendment to a Phase Budget will obligate the Port to submit a Port FY Budget consistent with the Phase Budget for the next and each succeeding City Fiscal Year during which the Parties expect to use Public Financing Sources, Advances of Land Proceeds, or Port Capital Advances to satisfy any part of the Project Payment Obligation.

3. LAND PROCEEDS

3.1. Use of Land Proceeds. Developer and the Port agree to the uses of Land Proceeds described in this Article. All Land Proceeds will be deposited or deemed deposited into Escrow, which will be deemed to be deposits into the Port Harbor Fund.

(a) Capital Costs. The Port will use Advances of Land Proceeds from Option Parcels as those funds become available to pay the Developer Balance and any Port Balance as specified in this Financing Plan. The Port may also use Advances of Land Proceeds to pay Developer pass-throughs.

(b) Deferred Infrastructure. Subject to the prior approval of all parties to the conveyance documents, when the Port conveys an Option Parcel to a Vertical Developer, the Vertical DDA will:

(i) identify any Deferred Instructure to be constructed by the Vertical Developer; and

(ii) obligate the Vertical Developer to construct any identified Deferred Infrastructure.

After completion of the Deferred Infrastructure by the Vertical Developer, the Developer may, in its sole discretion, agree to reimburse the Vertical Developer for its Deferred Infrastructure costs, in which case Developer will recover such reimbursement as a Capital Cost; provided, however, the Developer will not have the option to reimburse the Vertical Developer if Interim Satisfaction has occurred and if there are Project Payment Sources available to reimburse the Vertical Developer as a Developer pass-through.

(c) 20th/Illinois Plaza.

(i) The Port's offering document for Parcel K North will require the Vertical Developer to build the 20th/Illinois Plaza as a public benefit of the development project. The Port will specify an estimate of the cost to construct the 20th/Illinois Plaza based on third-party cost estimates.

(ii) The 20th/Illinois Plaza offset will be deemed to have been deducted from the Parcel K North Proceeds. The Port will instruct the Escrow Agent to disburse the Parcel K North Proceeds to Developer in accordance with **Section 2.3** (Entitlement Costs).

(iii) The initial amount of the Advance of Land Proceeds will be the sum of Parcel K North Proceeds and the 20th/Illinois Plaza offset, subject to true-up. The Port will enter the disbursement date, amount, and application of funds on the allonges to Promissory Note-LP and Promissory Note-X as applicable.

(iv) The Vertical Developer will be required to provide evidence of its actual costs to build the 20th/Illinois Plaza to the Port. The Port will revise its entries on the allonges to Promissory Note-LP and Promissory Note-X accordingly. The entries will date back to the date on which Parcel K North Proceeds were disbursed from Escrow.

(v) The Port may elect to require the Parcel K North Vertical Developer to build the Michigan Street segment also. If so, the offering

document will specify that the Vertical Developer will be the Port's fee developer for the Michigan Street segment subject to public works contracting requirements and an acquisition agreement complying with the CFD Law, and the Port will agree to pay the Vertical Developer's costs to build the Michigan Street segment using Pier 70 Condo CFD Proceeds. Under this payment structure, the Port will not be making an Advance of Land Proceeds.

(d) Hoedown Yard Improvements.

(i) Assuming that the City exercises or publicly offers its purchase option for the Hoedown Yard, the Port will work with the City on its offering document. At the City's election, the offering document may require the Hoedown Yard Vertical Developer to build Irish Hill Park. Subject to a City-approved budget, the City and the Port will agree to pay the Vertical Developer's costs with Hoedown Yard CFD Proceeds. If Hoedown Yard CFD Proceeds are not sufficient to pay for Irish Hill Park costs, the Port will use Port Tax Increment, except to the extent required under **Article 11** (Historic Buildings), to fill the gap.

(ii) The offering document will also specify whether construction of Irish Hill Park will be a public works project that the City will fund directly with Hoedown Yard CFD Proceeds, or whether the Vertical Developer will pay the cost to build Irish Hill Park conditioned on reimbursement from Hoedown Yard CFD Proceeds to the extent available and subject to the requirements of the CFD Law.

(e) Revenue Sharing. Land Proceeds will be the source of revenue-sharing as described in this Financing Plan.

3.2. Special Fund for Land Proceeds.

(a) Land Proceeds Fund. The Port will enter into the Special Fund Administration Agreement with the Special Fund Trustee specifying the Special Fund Trustee's duties to hold and administer the Land Proceeds Fund in accordance with this Financing Plan. In the Land Proceeds Fund, the Revenue Account has been created as a subaccount. The Special Fund Trustee's principal duties for the Land Proceeds Fund and the Revenue Account are described in this Article.

(b) Interim Satisfaction. At any time when the Project Payment Obligation for a Phase is satisfied, but the other conditions to Interim Satisfaction under **Subsection 3.6(b)** (Interim Satisfaction Event at Closing) have not been met, Land Proceeds will be deposited into the Land Proceeds Fund and be available for Capital Costs until Interim Satisfaction occurs. If all of the conditions under **Subsection 3.6(b)** (Interim Satisfaction Event at Closing) have been met, Land Proceeds will be deposited into, or transferred to, the Revenue Account for revenue-sharing. Funds deposited in the Revenue Account will be immediately disbursed to the Developer in the Developer Share and to the Port in the Port Share.

(c) Revenue Sharing. All other funds deposited in the Revenue Account under this Financing Plan will be immediately disbursed to the Developer in the Developer Share and to the Port in the Port Share. Land Proceeds in the Land Proceeds Fund will be transferred to the Revenue Account for revenue-sharing as described in **Section 3.10** (Distribution of Project Surplus).

(d) Character of Distributed Land Proceeds.

(i) The Developer Share of the Interim Satisfaction Balance distributed to Developer will not be subject to any obligation for Developer to reinvest the funds in Horizontal Development Costs or other restrictions on use under this Financing Plan.

(ii) The Port Share of the Interim Satisfaction Balance distributed to the Port will not be subject to any obligation for the Port to reinvest the funds in Horizontal Development Costs or other restrictions on use under this Financing Plan unless the Port committed to do so in a Phase Budget.

3.3. Right to Credit Bid. Under *DDA art. 7 (Parcel Conveyances)*, Developer, through its Vertical Developer Affiliates, has the right to tender a Credit Bid instead of cash for some or all of the Prepaid Rent or purchase price of each Option Parcel, subject to the Port's rights following a Subordination Event. Under this Section, the permitted amount of any Credit Bid will be applied automatically to a Vertical Developer Affiliate's purchase or ground lease of an Option Parcel.

(a) Calculation of Price. The price that a Vertical Developer Affiliate will be required to pay for Closing any Port conveyance of an Option Parcel will be as set forth in *DDA art. 7 (Parcel Conveyances)*.

(b) Public Financing Sources. Before the Credit Bid Determination Date, the Port will provide to Developer an update on available Public Financing Sources, which will exclude amounts intended to pay Approved Payments. The Parties will assume that the available Public Financing Sources, in addition to the Advance of Land Proceeds from the conveyance, would be used to pay Capital Costs before Developer Capital or Port Capital is used.

(c) Estimated Balance Owing.

(i) Developer will provide an estimate of the Developer Balance as of the Closing Deadline. The Port will provide an estimate of the Port Balance as of the Closing Deadline. The Parties must exchange this information and daily accrual rates by the Credit Bid Determination Date.

(ii) The Parties will assume that Developer will spend Developer Capital on Phase Improvements on projected spending dates occurring before the Closing Deadline to the extent not paid by Public Financing Sources or Land Proceeds. Estimated costs that Developer does not have under contract will not be considered for this purpose.

(iii) The Parties will assume that the Port will make one or more Port Capital Advances to pay for Phase Improvements as specified in any Port commitment to do so under **Section 7.5** (Treatment of Port Capital Advances).

(iv) If no Port Balance will be outstanding on the Credit Bid Determination Date, the amount that a Vertical Developer Affiliate may Credit Bid for the Port's conveyance of the Option Parcel will be determined under **Subsection 3.4(a)** (Developer Balance Only).

(v) If both a Developer Balance and a Port Balance will be outstanding on the Credit Bid Determination Date, the amount that a Vertical Developer

Affiliate may Credit Bid for the Port's conveyance of the Option Parcel will be determined under **Subsection 3.4(b)** (Balances Owed to Both Parties).

(vi) The right to Credit Bid will not affect a Vertical Developer Affiliate's obligation to pay Developer Closing Costs in cash to Close Escrow on the Port's conveyance of an Option Parcel.

(vii) When a Vertical Developer Affiliate must pay Fair Market Value to the Port both in cash and by Credit Bid, the entire Credit Bid must be applied to the outstanding Developer Balance before the Port authorizes disbursement of Land Proceeds to Developer.

3.4. Amount of Credit Bid. The Parties will establish the amount of a Vertical Developer Affiliate's Credit Bid no later than the Credit Bid Determination Date as follows.

(a) Developer Balance Only. This Subsection will apply when the Project Payment Obligation consists solely of the Developer Balance. The Parties' estimates will be subject to final adjustment to confirmed figures at the Close of Escrow.

(i) If the estimated Developer Balance is greater than the Fair Market Value of the Option Parcel, the Credit Bid will be the full amount of the Fair Market Value. The Port, in turn, will be deemed to have received the Credit Bid in Escrow at Closing and to have instructed the Escrow Agent to disburse the amount of the Credit Bid as an Advance of Land Proceeds immediately after Closing to Developer with a corresponding reduction in the Developer Balance, which Developer will record in the Developer Capital Schedule.

(ii) If the estimated Developer Balance is less than the Fair Market Value of the Option Parcel, the following will apply.

(1) The Vertical Developer Affiliate's Credit Bid will be limited to the amount of the Developer Balance, subject to the Port's rights under **Section 3.7** (Parcel Lease Options), plus 45% of the difference between the Fair Market Value of the Option Parcel and the Developer Balance, if any. The Credit Bid will be deemed to have been delivered into Escrow and paid to the Port at the Close of Escrow.

(2) The Port, in turn, will be deemed to have instructed the Escrow Agent to disburse funds in the amount of the Credit Bid at Closing as an Advance of Land Proceeds to Developer immediately after the Port's receipt to satisfy the Developer Balance on an interim basis and reduce the Developer Capital Schedule to zero.

(3) As a condition to Closing, the Vertical Developer Affiliate will be required to deposit cash into Escrow equal to the sum of:

(A) 55% of the difference between Fair Market Value and the Developer Balance; and

(B) the amount of Developer Closing Costs, or as otherwise determined under **Section 3.7** (Parcel Lease Options).

(4) The Joint Escrow Instructions will direct the Escrow Agent to pay Developer Closing Costs and then to disburse the remaining cash

Land Proceeds directly to the Port, or otherwise as set forth in **Section 3.7** (Parcel Lease Options).

(b) Balances Owed to Both Parties. This Subsection will apply when the Project Payment Obligation includes both a Developer Balance and a Port Balance on the Credit Bid Determination Date. The Parties' estimates will be subject to final adjustment to actual amounts at the Close of Escrow.

(i) If the sum of the estimated Developer Balance and Port Balance is greater than the Fair Market Value of the Option Parcel, the maximum amount of the Credit Bid will be Developer's pro rata share of the Fair Market Value, calculated in accordance with **Subsection 2.4(g)** (Pro Rata Payments), and the Vertical Developer must pay the difference between the Credit Bid and the Fair Market Value in cash. The Port, in turn, will be deemed to have received the Credit Bid in Escrow at Closing and to have instructed the Escrow Agent to disburse the amount of the Credit Bid as an Advance of Land Proceeds immediately after Closing to Developer.

(ii) If the Developer Balance and the Port Balance are less than the Fair Market Value of the Option Parcel on the Credit Bid Determination Date, the following will apply.

(1) The Vertical Developer Affiliate's Credit Bid will be limited to the amount of the Developer Balance, plus 45% of the difference between the Fair Market Value of the Option Parcel and the total of the Developer Balance and Port Balance. The Credit Bid will be deemed delivered into Escrow and paid to the Port at the Close of Escrow.

(2) The Port, in turn, will be deemed to have received the Credit Bid in Escrow at Closing, and to have instructed the Escrow Agent to disburse the amount of the Credit Bid immediately after Closing to Developer to satisfy the Developer Balance and reduce the Developer Capital Schedule to zero on an interim basis.

(3) As a condition to Closing, the Vertical Developer Affiliate will be required to deposit cash into Escrow equal to the sum of:

(A) the Port Balance;

(B) 55% of the difference between Fair Market Value of the Option Parcel and total of the Developer Balance and Port Balance; and

(C) the amount of Developer Closing Costs, or as otherwise determined under **Section 3.7** (Parcel Lease Options).

(4) The Joint Escrow Instructions will direct the Escrow Agent to pay Developer Closing Costs and disburse to the Port the remaining Land Proceeds, or otherwise as set forth in **Section 3.7** (Parcel Lease Options).

(iii) Developer must enter all cash and Credit Bids applied to the Developer Balance in the Developer Capital Schedule. The Port must enter all cash applied to the Port Balance in the Port Capital Schedule.

(c) Sample Calculations. The application of funds according to the priorities above is shown in the illustrative examples in **FP Schedule 5** (Sample Credit Bid Calculations), assuming the Port conveys an Option Parcel to a Vertical Developer Affiliate by Prepaid Lease at Fair Market Value.

3.5. Treatment of Third-Party Payments.

(a) Escrow. Unless the Port has made a Parcel Lease Election under **Section 3.7** (Parcel Lease Options), any Unrelated Vertical Developer that ground leases or buys an Option Parcel must deposit cash into Escrow equal to the sum of Fair Market Value and Developer Closing Costs. The Joint Escrow Instructions will direct the Escrow Agent to obtain demands for the Developer Balance and the Port Balance as of the Closing Deadline with daily accrual rates, subject to verification.

(b) Disbursements. Subject to **Section 3.7** (Parcel Lease Options), the Port will direct the Escrow Agent to pay Developer Closing Costs from the Escrow Account, then disburse the remaining funds at the Close of Escrow. Disbursements will be Advances of Land Proceeds for the following purposes and in the following order:

(i) to pay any remaining balance of the Entitlement Sum and accrued Developer Return;

(ii) to pay Capital Costs according to **Subsection 2.4(f)** (Priorities for Payment) and, if applicable, **Subsection 2.4(g)** (Pro Rata Payments); and

(iii) to the Special Fund Trustee for deposit in the Revenue Account of the Land Proceeds Fund.

3.6. Interim Satisfaction.

(a) Effect of Breach. This Section will not apply at any time when a potential breach or an uncured Event of Default by Developer exists.

(b) Interim Satisfaction Event at Closing. An Interim Satisfaction Event will occur by operation of this Financing Plan only when the Land Proceeds from the conveyance of an Option Parcel would be sufficient to:

(i) satisfy the Developer Balance in full in cash or by Credit Bid;

(ii) satisfy the Port Balance in full in cash; and

(iii) pay Phase Improvement Costs under existing contracts that are anticipated to be payable within 30 days after the Close of Escrow.

(c) Distribution of Interim Satisfaction Balance from Escrow. If the Port is conveying the Option Parcel in fee, the Port will instruct the Escrow Agent to disburse the Developer Share and the Port Share of the Interim Satisfaction Balance from Escrow to the Special Fund Trustee for deposit in the Revenue Account of the Land Proceeds Fund. If the Port is conveying the Option Parcel by Parcel Lease, **Section 3.7** (Parcel Lease Options) will apply.

3.7. Parcel Lease Options.

(a) Port Election. Interim Satisfaction will give rise to the Port's right to elect one of the Parcel Lease options under this Section. At Interim Satisfaction, the Port must provide a notice of Parcel Lease Election to Developer no later than 10 days after the appraisal of the Option Parcel becomes final under *DDA § 7.3 (Option Parcel Appraisals)*.

(b) Hybrid Lease. If the notice of Parcel Lease Election states that the Port elects to convey the Option Parcel by Hybrid Lease, the Port will require the Vertical Developer to enter into a Hybrid Lease for the Option Parcel. Under a Hybrid Lease, the Interim Satisfaction Balance will be distributed for revenue-sharing as described in this Subsection.

(i) The Port will direct the applicable Payment Agent to disburse available Public Financing Sources and the Advance of Land Proceeds needed to pay off the Developer Balance and the Port Balance and to pay Developer pass-throughs expected to be payable within 30 days after the Close of Escrow.

(ii) Under a Hybrid Lease, the remaining Land Proceeds will be the Interim Satisfaction Balance available for revenue-sharing as follows.

(1) The Developer Share of the Interim Satisfaction Balance will be disbursed from Escrow directly to Developer.

(2) The Port Share of the Interim Satisfaction Balance will be paid to the Port as Annual Ground Rent. Annual Ground Rent will be calculated by applying the Rent Conversion Factor to the Port Share of the Interim Satisfaction Balance, with the first installment paid at the Close of Escrow.

(3) For example, if the Interim Satisfaction Balance were $10 million, Developer would receive Prepaid Rent of $4.5 million in a lump sum in cash or by Credit Bid, and the Port would receive the first of 99 installments of Annual Ground Rent in cash at the Close of Escrow, calculated by the formula: $5.5 million x Rent Conversion Factor, subject to escalation under the Parcel Lease.

(iii) The Joint Escrow Instructions will direct the Escrow Agent to obtain demands for payment of the Developer Balance from Developer and for payment of the Port Balance from the Port, with each Party's demand subject to verification by the other Party, and to Close only after the Vertical Developer has deposited required funds into Escrow.

(iv) The Joint Escrow Instructions will direct the Escrow Agent to disburse funds remaining in the Escrow Account after paying the Developer Closing Costs in the following order and amounts, each of which will be an Advance of Land Proceeds:

(1) to Developer, the remaining balance of the Entitlement Sum and accrued Developer Return in cash or by Credit Bid, as applicable;

(2) in accordance with **Subsection 2.4(f)** (Priorities for Payment): to Developer, the Developer Balance in cash or by Credit Bid, as applicable; and to the Port, the Port Balance in cash.

(v) If disbursements under **clause (iv)** of this Subsection result in Interim Satisfaction, the Joint Escrow Instructions will direct the Escrow Agent to disburse funds remaining in the Escrow Account for revenue-sharing as follows:

(1) the Developer Share of the Interim Satisfaction Balance in cash or by Credit Bid to Developer; and

(2) the first installment of Annual Ground Rent due under the Hybrid Lease in cash to the Port.

(c) Prepaid Lease. If the notice of Parcel Lease Election states that the Port elects to convey the Option Parcel by Prepaid Lease, the Joint Escrow Instructions for the Prepaid Lease will direct the Escrow Agent to disburse Land Proceeds from Escrow in the following order and amounts:

(i) to the Escrow Agent, the Developer Closing Costs;

(ii) to Developer, the remaining balance of the Entitlement Sum and accrued Developer Return by an Advance of Land Proceeds in cash or by Credit Bid, as applicable;

(iii) the Developer Balance to Developer by an Advance of Land Proceeds in cash or by Credit Bid, as applicable, and the Port Balance to the Port by and Advance of Land Proceeds in cash; and

(iv) the Developer Share of the Interim Satisfaction Balance in cash or by Credit Bid to Developer, and the Port Share in cash to the Port.

(d) Developer Election. Developer will have right to elect to be paid Annual Ground Rent on the same conditions under which the Port can elect to receive Annual Ground Rent. Developer's election will be subject to an agreement between the Port and Developer, under which Developer's right to receive each annual installment of Annual Ground Rent will be subordinate to the Port's receipt of Annual Ground Rent.

3.8. Deferred Fair Market Value Payments.

(a) Deposits. A Vertical Developer may defer paying the entire Fair Market Value for a Commercial Parcel in the following manner. Vertical Developer Affiliates may Credit Bid amounts to be paid under this Section, subject to **Section 3.4** (Amount of Credit Bid).

(i) The Vertical Developer must make a nonrefundable deposit of 10% of the Fair Market Value of the Commercial Parcel.

(ii) No later than six months after making the initial deposit, the Vertical Developer must either:

(1) Close Escrow by paying the balance of the Fair Market Value for the Commercial Parcel; or

(2) make an additional nonrefundable deposit of 10% of the Fair Market Value of the Commercial Parcel.

(iii) The Vertical Developer must Close Escrow no later than six months after making the second deposit if it did not close under **clause (ii)** of this Subsection.

(b) Failure to Close or Make Deposits.

(i) If the Vertical Developer fails to take any step required by **clause (ii)** of **Subsection 3.8(a)** (Deposits), the Vertical Developer will forfeit the initial deposit and all rights to the Commercial Parcel.

(ii) If the Vertical Developer fails to timely Close Escrow under **clause (iii)** of **Subsection 3.8(a)** (Deposits), the Vertical Developer will forfeit both deposits and all rights to the Commercial Parcel.

(c) Application of Deposits. Deposits made under **Subsection 3.8(a)** (Deposits) will be nonrefundable and will be treated as Land Proceeds under **Section 3.3** (Right to Credit Bid) and **Section 3.4** (Amount of Credit Bid) if paid by a Vertical Developer Affiliate or under **Section 3.5** (Treatment of Third-Party Payments) if paid by an Unrelated Vertical Developer. The Port will take the same steps as set forth in **Subsection 3.3(c)** (Estimated Balance Owing) for determining the Developer Balance and the Port Balance by the date of the deposit.

3.9. Reporting. Developer Quarterly Reports must reflect the flow of all funds into and from Escrow for each Port conveyance of an Option Parcel, and the amount of Percentage Rent reported to Port under the Master Lease for the immediately prior Quarter. Each Vertical Developer Affiliate's payments to the Port must be broken down by amounts paid by Credit Bid or in cash. The Port's corresponding disbursements to Developer must also be broken down by Credit Bid and cash. Each Developer Quarterly Report must include an updated Developer Capital Schedule reflecting the Cumulative IRR and the reduction of the Developer Balance when funds are actually received or, in the case of a Credit Bid, as of the date of a deposit under **Section 3.8** (Deferred Fair Market Value Payments) or the Close of Escrow.

3.10. Distribution of Project Surplus.

(a) Distribution of Land Proceeds after Final Audit.

(i) After the Port has accepted the Final Audit under **Subsection 9.4(b)** (Final Audit), the Parties will review the aggregate amount of the Interim Satisfaction Balance distributed from time to time. If the Final Audit shows any discrepancy between the amounts each Party actually received and its respective revenue share, the Port will direct the Special Fund Trustee to make a disbursement from the Land Proceeds Fund as necessary to correct the discrepancy.

(ii) If no funds remain in the Land Proceeds Fund, but the Final Audit shows a discrepancy in the amounts disbursed, the Port will adjust distributions of the Project Surplus to the Port or the Developer, as applicable, to correct the discrepancy.

(iii) If no discrepancy is shown, the balance in the Land Proceeds Fund will be transferred to the Revenue Account and distributed as Project Surplus by Developer Share and Port Share.

(b) Final Distribution. After the Port has accepted the Final Audit under **Subsection 9.4(b)** (Final Audit), the Port will:

(i) transfer all funds in the Land Proceeds Fund to the Revenue Account for immediate disbursement to Developer and the Port by Developer Share and Port Share;

(ii) assign 45% of all PNLP Payments to Developer for payment as described in **Subsection 7.6(c)** (Promissory Note-LP); and

(iii) direct the CFD Agent and the IFD Agent to tender all PNLP Payments to the Special Fund Trustee for deposit into the Revenue Account for disbursement to Developer and the Port by Developer Share and Port Share until Promissory Note-LP has been fully paid.

4. MELLO-ROOS TAXES

4.1. Purpose.

(a) City Policy. Developer acknowledges that the CFD Goals will prevail in the event of any inconsistency with this Financing Plan, except to the extent that the Board of Supervisors waives any provision of the CFD Goals in the CFD Formation Proceedings or otherwise. The term sheet attached as **FP Exhibit E** outlines the principal terms that the Parties expect to be in the RMAs for the Pier 70 CFDs and the Hoedown Yard CFD.

(b) Authority for Pier 70 Leased Property CFD. Subject to Governing Law and Policy and the Pier 70 Leased Property CFD's authorized bonded indebtedness limit, when formed, the Pier 70 Leased Property CFD will be authorized to:

(i) finance all costs described in **Subsection 1.3(a)** (Pier 70 Leased Property CFD);

(ii) enter into a pledge agreement with the IFD to accept and expend Allocated Tax Increment in accordance with this Financing Plan;

(iii) incur indebtedness to repay Port Advances and sign and deliver promissory notes in favor of the Port as described in **Article 7** (Port Advances);

(iv) issue Mello-Roos Bonds through the City at the Port's request for any purpose authorized in this Financing Plan;

(v) after the Project Payment Obligation is fully satisfied, use available Project Payment Sources to pay amounts still owing under Promissory Note-LP, subject to the Interest Cost Limitation to the extent applicable;

(vi) after Promissory Note-LP is fully paid, use available Project Payment Sources to pay amounts owing under Promissory Note-X;

(vii) use Shoreline Special Taxes, amounts remaining in the Project Reserve Account and Shoreline Account, and Mello-Roos Bond Proceeds to pay directly for or pledge as security for Bonds to finance Pier 70 Shoreline Protection Facilities and, subject to Port Commission and Board of Supervisors approval, for other Pier 70 costs and other uses permitted under the CFD Formation Proceedings for the Pier 70 Leased Property CFD;

(viii) for the purpose of maximizing Public Financing Proceeds to the extent permitted under Governing Law and Policy, enter into other arrangements to advance Facilities Special Taxes collected on a pay-as-you-go basis from Taxable Parcels in the Pier 70 Leased Property CFD to pay eligible Capital Costs until other Project Payment Sources are available; and

(ix) use Services Special Taxes to pay Ongoing Maintenance Costs of the FC Project Area Maintained Facilities as described in **Subsection 1.3(a)** (Pier 70 Leased Property CFD).

(c) <u>Authority for Pier 70 Condo CFD</u>. Subject to Governing Law and Policy and the Pier 70 Condo CFD's authorized bonded indebtedness limit, when formed, the Pier 70 Condo CFD will be authorized to:

(i) finance all costs described in **Subsection 1.3(b)** (Pier 70 Condo CFD);

(ii) enter into a pledge agreement with the IFD and accept and expend Allocated Tax Increment in accordance with this Financing Plan;

(iii) incur indebtedness to repay Port Advances and sign and deliver promissory notes in favor of the Port as described in **Article 7** (Port Advances);

(iv) issue Mello-Roos Bonds through the City at the Port's request for any purpose authorized in this Financing Plan;

(v) after the Project Payment Obligation is fully satisfied, use available Project Payment Sources to pay amounts still owing under Promissory Note-LP, subject to the Interest Cost Limitation to the extent applicable;

(vi) after Promissory Note-LP is fully paid, use available Project Payment Sources to pay amounts owing under Promissory Note-X;

(vii) for the purpose of maximizing Public Financing Proceeds available under Governing Law and Policy, enter into other arrangements to advance Facilities Special Taxes collected from Taxable Parcels in the Pier 70 Condo CFD to pay eligible Capital Costs until other Project Payment Sources are available;

(viii) use Services Special Taxes levied in Zone 1 of the Pier 70 Condo CFD to pay Ongoing Maintenance Costs of Parcel K North Maintained Facilities; and

(ix) use Services Special Taxes levied in Zone 2 of the Pier 70 Condo CFD to pay Ongoing Maintenance Costs of FC Project Area Maintained Facilities as described in **Subsection 1.3(b)** (Pier 70 Condo CFD).

(d) Authority for the Hoedown Yard CFD. Subject to Governing Law and Policy and the Hoedown Yard CFD's authorized bonded indebtedness limit, when formed, the Hoedown Yard CFD will be authorized to:

(i) finance all costs described in **Subsection 1.3(c)** (Hoedown Yard CFD);

(ii) issue Mello-Roos Bonds through the City at the Port's request for any purpose authorized in this Financing Plan; and

(iii) use Services Special Taxes from the Hoedown Yard CFD to pay Ongoing Maintenance Costs of Hoedown Yard Maintained Facilities as described in **Subsection 1.3(c)** (Hoedown Yard CFD).

(e) Special Tax Levy on Leasehold Interests. Tenants under the Parcel Leases and the Tenant under the Master Lease will pay Mello-Roos Taxes levied on leasehold interests in the Pier 70 Leased Property CFD. The City, the Port, and Developer agree that the Port's rights to terminate these leasehold interests for any reason may be limited by the Parcel Leases, the Master Lease, and pertinent Indentures, as applicable, to preserve the City's right to collect the Mello-Roos Taxes.

4.2. City Implementation. The City has agreed to undertake the CFD Formation Proceedings for each CFD in the Tax Allocation MOU.

(a) Agreement to Form CFDs. Promptly following the recordation of a Transfer Map for the 28-Acre Site, the City will:

(i) form the Pier 70 Leased Property CFD, with special tax rates and other terms set forth in the RMA Term Sheet set forth in **FP Exhibit E** and as otherwise required by this Financing Plan or agreed by the Parties;

(ii) designate the Future Annexation Area of the Pier 70 Leased Property CFD;

(iii) form the Pier 70 Condo CFD, with special tax rates and other terms set forth in the RMA Term Sheet set forth in **FP Exhibit E** and as otherwise required by this Financing Plan or as agreed by the Parties;

(iv) designate the Future Annexation Area of the Pier 70 Condo CFD; and

(v) form the Hoedown Yard CFD, with special tax rates and other terms set forth in the RMA Term Sheet set forth in **FP Exhibit E** and as otherwise required by this Financing Plan or as agreed by the Parties.

(b) Agreement to Allocate Special Taxes. The City has agreed to allocate to each CFD the Mello-Roos Taxes from each CFD for use in accordance with this Financing Plan.

(c) Appointment of Port as Agent. The City will appoint the Port as CFD Agent to take all authorized actions on behalf of each CFD, including:

(i) directing the Special Fund Trustee to disburse Mello-Roos Taxes for the purposes specified in the applicable CFD Formation Proceedings and described in this Financing Plan;

(ii) determining in collaboration with the Public Finance Division of the Controller's Office whether and in what amounts the City will issue Bonds on behalf of each CFD;

(iii) directing the Indenture Trustees' disbursement of Mello-Roos Bond Proceeds;

(iv) incurring and repaying indebtedness as set forth in Promissory Note-LP and Promissory Note-X; and

(v) for the purpose of maximizing Public Financing Proceeds available under Governing Law and Policy, enter into other arrangements to advance Facilities Special Taxes collected on a pay-as-you-go basis from Taxable Parcels in the Pier 70 Leased Property CFD or proceeds of Mello-Roos-only Bonds to pay eligible Capital Costs until other Project Payment Sources are available.

(d) CFD Reporting Requirements. The Port as CFD Agent will prepare on behalf of each CFD an annual CFD Report in compliance with California Government Code sections 50075.1(d), 50075.3(d), and 53411 for each CFD, reporting on:

(i) the amount of Mello-Roos Taxes collected and expended;

(ii) the amount of Mello-Roos Bond Proceeds collected and expended; and

(iii) the status of the Project.

(e) Tax Allocation MOU. The Port has requested that the Board of Supervisors authorize the Controller and the Treasurer-Tax Collector to enter into the Tax Allocation MOU with the Port under Charter section B7.320 in furtherance of the Financing Documents as follows.

(i) The Treasurer-Tax Collector will levy and collect in a segregated fund Mello-Roos Taxes from each CFD as directed by the Port as CFD Agent, to the extent consistent with the Financing Documents.

(ii) The Port will consult with the Public Finance Division of the Controller's Office on timing, amounts, and other matters relating to Mello-Roos Bonds, and the Port, the Treasurer-Tax Collector, and the Controller will cooperate to implement the objectives of the Financing Documents.

4.3. Special Fund for Special Taxes. Under sections 50075 and 53410 of the California Government Code, Mello-Roos Taxes must be deposited into a designated account. The Port will enter into the Special Fund Administration Agreement with the Special Fund Trustee authorizing the trustee to establish segregated accounts as needed to implement this Financing Plan.

(a) Improvement Special Taxes. The Parties will prepare **FP Exhibit F** for insertion into this Financing Plan during or shortly after the CFD Formation Proceedings

and the IFD Formation Proceedings are complete. The authorized accounts in the Special Tax Fund for Improvement Special Taxes are anticipated to be:

(i) the Pier 70 CFD Facilities Accounts;

(ii) the Project Reserve Account;

(iii) the Shoreline Account;

(iv) the Arts Building Account;

(v) the Pier 70 Condo CFD Account;

(vi) the Hoedown Yard Facilities Account; and

(vii) other accounts to hold funds to repay indebtedness incurred by any Facilities CFD under this Financing Plan.

(b) Shoreline Account. After the Project Payment Obligation is satisfied and Promissory Note-LP is fully paid, any funds remaining in any of the Pier 70 CFD Facilities Accounts and the Project Reserve Account will be transferred to the Shoreline Account.

(c) Services Special Taxes. The authorized accounts in the Services Special Tax Fund will be:

(i) the Pier 70 Leased Property Services Account;

(ii) the Pier 70 Condo CFD Services Account; and

(iii) the Hoedown Yard Services Account.

4.4. Notice of Contract to Maintain Levy of CFD Financing. Under Section 3 of article XIIIC of the California Constitution, under certain circumstances, voters may vote to reduce or repeal the levy of special taxes in a community facilities district. Section 9 of article I of the California Constitution, however, prohibits the passage of a law resulting in an impairment of contract.

(a) Notice. This Section provides notice of the following:

(i) The DDA, including this Financing Plan, is a contract between the Port and Developer.

(ii) This Financing Plan:

(1) describes an integrated program to finance Capital Costs, 100% affordable housing in the AHP Housing Area, the Historic Building Feasibility Gap, the Arts Building Funding, the Noonan Replacement Space, Ongoing Maintenance Costs, the Pier 70 Shoreline Protection Facilities, PNLP Payments, payments on Promissory Note-X, and the CFD Administrative Costs through the application of Mello-Roos Taxes and Mello-Roos Bonds secured and payable by Improvement Special Taxes and Services Special Taxes; and

(2) is an essential part of the consideration for the DDA.

(iii) Any reduction in the City's ability to levy and collect Mello-Roos Taxes on behalf of each CFD for purposes specified in this Financing Plan would materially impair Developer's and the Port's contractual rights and obligations under the DDA.

(b) Intent to Maintain Contract. To further preserve the contractual rights and obligations under the DDA, the Port agrees that the following will apply until all Mello-Roos Bonds and all other debts have been repaid in full or defeased before maturity for any reason other than a refunding.

(i) Until the Port has satisfied the Project Payment Obligation and paid Promissory Note-LP, neither the Port nor the City will initiate or conduct proceedings under CFD Law to reduce the Special Tax rates except by agreement with Developer or if legally compelled to do so (e.g., by a final judgment).

(ii) If the voters adopt an initiative ordinance under section 3 of article XIIIC of the California Constitution that purports to reduce, repeal, or otherwise alter the Special Tax rates, the Port will meet and confer with Developer and the City to consider reasonable legal action to preserve the Port's ability to comply with its obligations under the DDA and this Financing Plan.

4.5. RMA Generally.

(a) Cooperation. Developer and the Port are working cooperatively to develop RMAs for each Pier 70 CFD that are consistent with this Financing Plan. Agreed principal terms for each Pier 70 CFD and the Hoedown Yard CFD are shown in **FP Exhibit E**.

(b) Priority Administrative Costs. In the formation process for each CFD, the Port will estimate the amount of annual CFD Administrative Costs that will have first priority for payment by Mello-Roos Taxes based on: (i) actual administration costs of other community facilities districts in San Francisco; (ii) the CFD's complexity and size; and (iii) estimated costs of administrative services to be provided by Port and City staff and consultants.

(c) Special Tax Rates for Pier 70 Leased Property CFD. Developer and the Port agree as follows.

(i) The maximum annual Facilities Special Taxes in the RMA for the Pier 70 Leased Property CFD will be on a building square footage basis and will not exceed 80% of the anticipated average annual Project Tax Increment to be generated from Taxable Parcels in the CFD. For example, if the projected average annual Project Tax Increment for Leased Parcels is $5.00 per building square foot, then the maximum annual Facilities Special Taxes for the Pier 70 Leased Property CFD will be not higher than $4.00 per building square foot.

(ii) In addition, the Developer and the Port agree that Facilities Special Taxes will not be levied on any Taxable Parcel in the Pier 70 Leased Property CFD after the IFD Termination Date for the Sub-Project Area in which the Taxable Parcel is located.

(d) Reduction of Special Tax Rates for Pier 70 Leased Property CFD. If the City, the Port, and Developer determine, before the City issues the first series of Mello-Roos Bonds secured by Improvement Special Taxes levied in the Pier 70 Leased Property CFD, that the anticipated average annual Project Tax Increment from Taxable Parcels is less than the amount projected at formation of the CFD, then the City and Developer will:

(i) take the steps necessary to reduce the Facilities Special Tax rates in the RMA for the Pier 70 Leased Property CFD to an amount not more than 80% of the revised anticipated average annual Project Tax Increment to be generated from Taxable Parcels in the CFD; and

(ii) take the steps necessary to reduce the Shoreline Special Tax rates to reflect the decrease in assessed valuation.

(e) Delinquencies. Each RMA will include a provision that limits the CFD's authority to increase the levy of Special Taxes on any Taxable Parcel to make up for the delinquencies of other taxpayers in the CFD. The CFD will not be permitted to levy an amount in any year that is more than 10% of the maximum Special Tax Rate for the Taxable Parcel for this purpose.

(f) Annual Levy. After formation of the Pier 70 CFDs, the CFD Administrator will consult with Developer as needed to determine in each City Fiscal Year:

(i) what development has occurred in the prior City Fiscal Year;

(ii) the amount of Project Tax Increment in the Tax Increment Fund;

(iii) the amount of Housing Tax Increment in the Housing Tax Increment Fund;

(iv) the debt service requirements for each CFD; and

(v) the anticipated CFD Administrative Costs.

(g) Material Changes to CFD Law. If CFD Law changes to make Mello-Roos Taxes unavailable or severely impair the uses authorized by the Financing Documents, the Port and Developer in consultation with the City will negotiate in good faith to establish a substitute financing program equivalent in nature and function as allowed under then-current Governing Law and Policy.

4.6. Services Special Taxes.

(a) Authorized Costs. The RMA for each Services CFD will authorize the City to levy Services Special Taxes annually in the amounts needed to provide a perpetual pay-as-you-go source to fund Ongoing Maintenance Costs of Maintained Facilities. Developer acknowledges that Maintained Facilities will never include private open space.

(b) No Prepayment. The RMA for each CFD will provide that taxpayers will not be allowed to prepay Services Special Taxes.

(c) Other Sources for Ongoing Maintenance Costs.

(i) Although the City and the Port will acquire all Horizontal Improvements from Developer under this Financing Plan, the Maintained Facilities are important to the ongoing success and identity of the Project. To protect its investment, Developer has agreed to establish a supporting framework if needed or desired to replace or supplement the Services Special Taxes, which may include assessments through one or more property owners associations, to assist in funding Ongoing Maintenance Costs if necessary.

(ii) In addition, the Port will establish maintenance obligations among all other Pier 70 tenants and property owners, as well as consenting adjacent landowners who benefit from adjacency of Maintained Facilities, to contribute their equitable shares toward Ongoing Maintenance Costs.

(d) Covenants.

(i) The Port has informed Developer that, because of limited Port revenue sources, the Port would not enter into the DDA or Financing Plan without ensuring an ongoing funding source for Ongoing Maintenance Costs.

(ii) Developer agrees to obtain Port or City, if applicable, approval of and establish maintenance covenants to be recorded in the Official Records before the Port or the City conveys any Taxable Parcel in any CFD formed in the SUD. Maintenance covenants will run with the land and be binding on successors in perpetuity.

(iii) The maintenance covenants will specify that the City, including the Port, is an intended beneficiary and obligate every owner of a Taxable Parcel to pay an amount equivalent to Services Special Taxes that would have been levied if the CFDs or their taxing powers are ever eliminated or reduced for any reason, including any vote of the qualified electors in the CFD.

4.7. Project Reserve and Shoreline Accounts.

(a) Funding for Accounts. The CFD Formation Proceedings will authorize the Pier 70 Leased Property CFD to assess Shoreline Special Taxes on Taxable Parcels in the Pier 70 Leased Property CFD.

(i) Shoreline Special Taxes will be levied at the times and the rates in the RMA on each Taxable Parcel in the Pier 70 Leased Property CFD (other than any Historic Buildings).

(ii) Until the Project Payment Obligation is satisfied and Promissory Note-LP is fully repaid, Shoreline Special Taxes, after making any payments due on a Principal Payment Date, paying priority and any other CFD Administrative Costs, and setting aside amounts needed to replenish any other reserves, will be held for authorized purposes.

(b) Division of Funds. For each Phase, until the conditions described in **clause (ii)**, **clause (iii)**, or **clause (iv)** of this Subsection have occurred, 75% of the Shoreline Special Taxes collected under **Subsection 4.7(a)** (Funding for Accounts) from Taxable Parcels (other than any Historic Building) in that Phase of the Pier 70 Leased Property CFD will be deposited into the Project Reserve Account.

(i) If at the end of a Phase, the Phase Audit shows that the Phase reached Phase Satisfaction, then the following will apply (as shown in the illustrative examples titled "Shoreline 1" and "Shoreline 1 Formulas" in **FP Schedule** 7).

(1) One-third of the Shoreline Special Taxes collected in the Phase remaining on deposit in the Project Reserve Account will be transferred to the Shoreline Account.

(2). Transfers of Shoreline Special Taxes collected from the Taxable Parcels in the Phase to the Project Reserve Account will be reduced from 75% to 50%.

(3) Amounts remaining on deposit in the Project Reserve Account after the transfer under **paragraph (1)** and amounts later deposited into the Project Reserve Account will be applied as needed for Later Phases.

(ii) If at the end of a Phase, the Phase Audit shows that the Phase did not reach Phase Satisfaction, but Phase Satisfaction could be reached by using one-third or less of the funds in the Project Reserve Account, then the following will apply (as shown in the illustrative examples titled "Shoreline 2" and "Shoreline 2 Formulas" in **FP Schedule** 7).

(1) Funds on deposit in the Project Reserve Account will be disbursed and applied to Capital Costs in accordance with **Subsection 2.4(g)** (Pro Rata Payments) in amounts required to reach Phase Satisfaction for the Phase.

(2) After the transfer under **paragraph (1)**, additional funds from the Project Reserve Account will be transferred to the Shoreline Account so that, after the transfer under this Paragraph, the amount on deposit in the Project Reserve Account from Shoreline Special Taxes collected from Taxable Parcels in the Phase is equal to two-thirds of the amount that was in the Project Reserve Account before the transfer under **paragraph (1)**, as shown in the Phase Audit.

(3) After the transfer under **paragraph (1)**, deposits into the Project Reserve Account of Shoreline Special Taxes from Taxable Parcels in the Phase will be reduced from 75% to 50%.

(4) Amounts remaining on deposit in the Project Reserve Account after the transfer under **paragraph (1)** and amounts later deposited into the Project Reserve Account will be applied as needed for Later Phases.

(iii) If at the end of a Phase, the Phase Audit shows that the Phase did not reach Phase Satisfaction, but Phase Satisfaction can be reached by using more than one-third of the funds in the Project Reserve Account, the following will apply (as shown in the illustrative examples titled "Shoreline 3" and "Shoreline 3 Formulas" in **FP Schedule 7**).

(1) Funds on deposit in the Project Reserve Account will be disbursed and applied to Capital Costs in accordance with

Subsection 2.4(g) (Pro Rata Payments) in amounts required to reach . Phase Satisfaction.

(2) After the disbursements under **paragraph (1)**, no transfers will be made to the Shoreline Account.

(3) After the disbursements under **paragraph (1)**, deposits into the Project Reserve Account of Shoreline Special Taxes from Taxable Parcels in the Phase will be reduced from 75% to 50%.

(4) Amounts remaining on deposit in the Project Reserve Account after the disbursements under **paragraph (1)** and Shoreline Special Taxes from Taxable Parcels in the Phase later deposited into the Project Reserve Account will be applied as needed for Later Phases.

(iv) If at the end of a Phase, the Phase Audit shows that the Phase did not reach Phase Satisfaction, and Phase Satisfaction cannot be achieved using funds on deposit in the Project Reserve Fund, then the following will apply (as shown in the illustrative examples titled "Shoreline 4" and "Shoreline 4 Formulas" in **FP Schedule** 7).

(1) All of the funds in the Project Reserve Account will be disbursed and applied to Capital Costs of the Phase in accordance with **Subsection 2.4(d)** (Payments from Project Payment Sources), **Subsection 2.4(f)** (Priorities for Payment), and **Subsection 2.4(g)** (Pro Rata Payments).

(2) The Pier 70 Leased Property CFD will issue Mello-Roos Bonds sized to 75% of and secured by Shoreline Special Taxes levied on Taxable Parcels in the Phase. Bond Proceeds will be applied to Capital Costs of the Phase in accordance with **paragraph (1)**.

(3) If proceeds of Bonds issued under **paragraph (2)** are not sufficient to achieve Phase Satisfaction, available proceeds of any Bonds issued to fund Phase Improvements will be applied. The same priorities will apply.

(4) 75% of the Shoreline Special Taxes will continue to be deposited into the Project Reserve Account to provide funds to pay debt service on Bonds issued under **paragraph (2)**.

(v) For each Phase, funds deposited into the Shoreline Account will be limited initially to 25% of the Shoreline Special Taxes collected under **Subsection 4.7(a)** (Funding for Accounts) from Taxable Parcels in the Phase. After satisfaction of the conditions set forth in **clauses (i)**, **(ii)**, or **(iii)** of this Subsection, deposits into the Shoreline Account will be increased to 50% of the Shoreline Special Taxes collected from Taxable Parcels in the Phase. If **clause (iv)** of this Subsection applies, deposits into the Shoreline Account will continue to be limited to 25% of Shoreline Special Taxes collected in the Phase.

(c) Project Reserve. The Project Reserve Account will be used for the following expenses, in the order of priority listed below.

(i) Entitlement Sum and accrued Developer Return;

(ii) other Horizontal Development Costs;

(iii) Developer Balance and Port Balance in accordance with **Subsection 2.4(d)** (Payments from Project Payment Sources), subject to **Subsection 2.4(f)** (Priorities for Payment), and **Subsection 2.4(g)** (Pro Rata Payments); and

(iv) the Historic Building Feasibility Gap.

(d) Shoreline Account. The Shoreline Account will be used for the expenses listed below, subject to completion of any required environmental review under CEQA.

(i) Shoreline Adaptation Studies;

(ii) Shoreline Protection Facilities; and

(iii) Pier 70 Shoreline Protection Facilities if Pier 70 Condo CFD Proceeds are insufficient.

(e) Project Reserve Transfers to Shoreline Account.

(i) When the accounts in the Facilities Special Tax Fund for the Pier 70 CFDs and the Project Reserve Account are each Ready for Close, all funds remaining in each account will be transferred into the Shoreline Account and used for Pier 70 Shoreline Protection Facilities if needed and for other Port capital facilities approved by the Port Commission and the Board of Supervisors.

(ii) The RMA for the Pier 70 Leased Property CFD will provide that the CFD is authorized to continue to levy Shoreline Special Taxes in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD to fund the Shoreline Protection Project after the Port has satisfied all of its payment obligations to Developer under this Financing Plan.

(f) Determining Pier 70 Shoreline Protection Facilities.

(i) Before the anticipated date of the Final Audit, the Port will complete a technical study of the 28-Acre Site Project's shoreline protection needs to provide a commercially reasonable standard of flood protection based on then-available scientific consensus (e.g., National Research Council or Intergovernmental Panel on Climate Change) for mid-high range of projected sea-level rise for the period through the term of the Master Lease and the Parcel Leases for the 28-Acre Site with the latest expiration date.

(ii) The Port and Developer will review the study and agree on a commercially reasonable design for needed potential shoreline improvements to protect the 28-Acre Site from sea-level rise.

(iii) The Port and Developer will review and comment on designs for improvements outside of the 28-Acre Site that are needed to protect the 28-Acre Site, but the Port will have final design control and decision as long as Developer concurs that the scope will protect the 28-Acre Site.

(iv) The Port, in consultation with Developer, will determine the commercially reasonable costs of implementing the flood protection project to

protect the 28-Acre Site determined by this process, including a 100% contingency and annual escalation factors consistent with escalation used in the DDA for other costs and revenues.

(v) Once design is work finalized, the Port and Developer will agree on a construction schedule for the flood protection project. In accordance with this Financing Plan, the Port will fund the Pier 70 Shoreline Protection Facilities with:

(1) Any remaining Allocated Project Tax Increment for the balance of the respective terms of the Sub-Project Areas;

(2) Facilities Special Taxes levied in Zone 2 of the Pier 70 Condo CFD;

(3) available Shoreline Special Taxes; and

(4) any proceeds of any Bonds secured by these sources.

(vi) The costs of Pier 70 Shoreline Protection Facilities will not be financed until all of the following are paid in full:

(1) the Project Payment Obligation;

(2) Promissory Note-LP; and

(3) all other payment obligations to Developer under this Financing Plan.

(vii) After all of the obligations under **clause (vi)** have been satisfied, and the Port has identified and set aside sources to pay for the projected costs of Pier 70 Shoreline Protection Facilities, Public Financing Sources from the 28-Acre Site that are not subject to the Interest Cost Limitation will be applied to Promissory Note-X.

(viii) Nothing in this Subsection will be construed to limit the ability of the Port to:

(1) spend Shoreline Special Taxes from the Shoreline Account;

(2) request that the City issue Bonds secured by Shoreline Special Taxes on deposit in the Shoreline Account; or

(3) spend the resulting Bond Proceeds on Shoreline Protection Facilities outside of Pier 70.

4.8. Shortfall Provisions.

(a) Developer Waiver and Covenant. Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Master Lease Premises until the IFD Termination Date. In addition, Developer covenants that should Developer initiate a Reassessment on a Taxable Parcel in the SUD in violation of the waiver in this Section, and subject to

Subsection 4.8(c) (Circumstances Causing Shortfall), Developer and the Port will take the following measures to avoid shortfalls.

(i) Developer will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(ii) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates:

(1) the applicable IFD Termination Date; and

(2) when the Assessment Shortfall is reduced to zero.

(b) Vertical Developer Waiver and Covenant. The Parties have agreed on forms of Vertical DDAs and Parcel Leases for Vertical Developers that include the following provisions.

(i) A waiver in which the Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of any Taxable Parcel in the SUD until the IFD Termination Date.

(ii) A covenant by the Vertical Developer that should the Vertical Developer initiate a Reassessment on a Taxable Parcel in the SUD in violation of the waiver, and subject to **Subsection 4.8(c)** (Circumstances Causing Shortfall), the Vertical Developer and the Port will take the following measures to avoid shortfalls:

(1) Vertical Developer will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(2) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

(c) Circumstances Causing Shortfall. This Section will apply if Developer or any Vertical Developer initiates a Reassessment on a Taxable Parcel in the SUD in violation of **Subsection 4.8(a)** (Developer Waiver and Covenant) or **Subsection 4.8(b)** (Vertical Developer Waiver and Covenant).

(d) Tax Exemption. Developer and the Port do not intend for this Section to affect the tax-exempt status of any Bonds. Should the Tax Code change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt Bonds to be deemed taxable due to the requirements under this Section, the Port will release the obligations under this Section and it will be deemed severed from this Financing Plan under *App ¶ A.4.3 (Severability)*.

(e) Mutual Expectations as to Shortfall Measures. Neither Developer nor the Port expects the Port to make demand for payment under this Section. In light of the

Parties' mutual expectations, Developer has agreed to the waiver in **Subsection 4.8(a)** (Developer Waiver and Covenant) and to include waiver and covenant language in documents with Vertical Developers as described in **Subsection 4.8(b)** (Vertical Developer Waiver and Covenant).

(f) No Negotiation. Developer understands that the Port would not be willing to enter into this Financing Plan without this Section.

4.9. Future Annexations. This Section will apply to each Development Parcel located in the Future Annexation Area.

(a) Notice of Intended Development. Developer will provide notice to the Port and the City of Developer's decision to develop the parcel as NOI Property or as a Residential Condo Project.

(b) Timing of Annexation. Within 60 days after receiving Developer's notice, the Port and the City will initiate proceedings necessary to:

(i) annex any parcel that will be developed as NOI Property to the Pier 70 Leased Property CFD; or

(ii) annex any parcel that will be developed as a Residential Condo Project to the Pier 70 Condo CFD.

(c) Annexation Procedure. Annexation will be implemented by the Port's delivery of its written unanimous approval (which does not require a public hearing) and an amendment to the Notice of Special Tax Lien as required by the CFD Law. At the recommendation of Bond Counsel, the Port may seek a Board of Supervisors resolution confirming annexation.

4.10. Limit on Actions. Neither the City nor the Port will take any action under the CFD Law or otherwise to do any of the following without Developer's prior consent: (i) initiate proceedings to modify or repeal any provision of any RMA or the CFD Law, the list of authorized facilities and services, the Special Tax rates, or the authorized bonded indebtedness; or (ii) annex any property to any CFD except under **Section 4.9** (Future Annexations). The Port and Developer agree to ask the Board of Supervisors to include a provision in legislation for the CFD Formation Proceedings that affirms, consistent with the Development Agreement, that the City will not enforce any future changes to the CFD Law or the Port IFD Guidelines in a manner that would impair the financing for the 28-Acre Site Project.

4.11. Validation. Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the CFDs and matters authorized under each RMA and this Financing Plan. Attorneys' fees associated with these validation actions will be Port Costs or City Costs that are reimbursable under **Section 9.2** (Port Accounting and Budget).

4.12. Early Facilities Special Taxes. This Section will apply if Early Mello-Roos Bonds secured by Facilities Special Taxes from the Pier 70 Leased Property CFD are issued.

(a) Developer's Agreement to Pay. Before the Port Closes Escrow on any Parcel Lease for a Development Parcel in the Pier 70 Leased Property CFD, Developer will enter into an agreement with the Vertical Developer to reimburse to the Vertical Developer or pay the first two years' Facilities Special Tax levy, if any, on the

Development Parcel. Each payment that Developer makes under its agreement with the Vertical Developer (excluding penalties and interest) will be a Soft Cost reported on the Developer Capital Schedule. The agreement between Developer and the Vertical Developer will require the Vertical Developer to pay any Facilities Special Taxes levied on the Development Parcel if Developer fails to pay or reimburse the Facilities Special Taxes under the agreement.

(b) Amount of Levy. Under its agreement with the Vertical Developer, Developer will only be required to pay or reimburse the Vertical Developer for the amount of the Facilities Special Tax levy that appears on the tax bill for the Development Parcel plus penalties and interest on the payment if delinquent. For example, if Bond Proceeds include capitalized interest sufficient to pay the levy during the two-year period, the CFD will not levy the tax, and no payment obligation will arise.

(c) Limitation on Obligation to Pay. The Parties expect the agreement to provide that Developer will have no obligation to pay or reimburse the Vertical Developer for any of the following with respect to a Development Parcel in the Pier 70 Leased Property CFD after the Port has conveyed the Development Parcel to a Vertical Developer:

(i) Facilities Special Taxes levied on the Development Parcel after the parcel becomes Developed Property as defined in the RMA;

(ii) any other taxes levied on the Development Parcel;

(iii) any more than the amount of an installment of Facilities Special Taxes when due under the tax bill, plus penalties and interest on the payment if delinquent; or

(iv) more than the first two years of Facilities Special Taxes levied on the Development Parcel.

4.13. Conforming Amendments to Transaction Documents. Concurrent with the CFD Formation Proceedings, the Port and Developer in consultation with the City will negotiate in good faith regarding amendments to the DDA, Financing Plan, and Master Lease as required to address orderly foreclosure processes for both the Pier 70 Leased Property CFD and the Pier 70 Condo CFD. If the revisions would be a material change to the approved transaction documents, the Port and Developer will seek Port Commission and Board of Supervisors approval of the agreed amendments to the DDA, Financing Plan, and Master Lease in the Board of Supervisor's resolution approving the CFD Formation Proceedings (or companion legislation to be approved at the same time), and in a separate Port Commission resolution.

5. MELLO-ROOS BONDS

5.1. Legal Limitations. The following limitations and priorities will apply to the use of Mello-Roos Bond Proceeds.

(a) Fair Market Price. To comply with CFD Law section 53313.51, the Acquisition Agreement for the Horizontal Improvements specifies Acquisition Prices for Horizontal Improvements that the Parties agree represent a fair market price or method to determine a fair market price for each capital facility or discrete portion or phase of a capital facility to be acquired. In addition, Horizontal Development Costs will be

reimbursed under this Financing Plan with "an amount reflecting the interim cost of financing cash payments that must be made during the construction of the project."

(b) Interest Cost Limitation. Any Mello-Roos Bonds secured and payable by a pledge of Tax Increment will be subject to the Interest Cost Limitation.

5.2. Use of Proceeds.

(a) Priorities. Until the Project Payment Obligation is satisfied, Mello-Roos Bond Proceeds will be available only after the following are fully funded:

(i) required reserves and costs of issuance;

(ii) capitalized interest for debt service covering a period that the City will determine on a case-by-case basis, in its sole discretion, after consultation with the Port and the Developer; and

(iii) for the purposes authorized in the applicable Indenture.

(b) Payment Priorities. The priorities under **Subsection 2.4(f)** (Priorities for Payment) will apply to all Mello-Roos Bond Proceeds except as limited by Governing Law and Policy, this Financing Plan, and the CFD Formation Proceedings. After satisfying the obligations under **Subsection 2.4(f)** (Priorities for Payment), the Port may use Mello-Roos Bond Proceeds for any other eligible use consistent with applicable Indentures and the CFD Formation Proceedings.

(c) Financing Temporarily Excused. The City will not be obligated to issue any Mello-Roos Bonds under this Financing Plan at any time during which:

(i) Developer or any Vertical Developer Affiliate is in default in the payment of any ad valorem tax or Mello-Roos Taxes levied on any Taxable Parcel in a Sub-Project Area or the Pier 70 Leased Property CFD;

(ii) the Port has declared Developer to be in Material Breach of the DDA;

(iii) the Port has declared any Vertical Developer Affiliate to be in breach of its conveyance agreement provisions incorporating specified DDA obligations;

(iv) the Port or the City, each in its sole judgment in light of the Funding Goals and advice from staff and consultants, finds that market conditions, or conditions affecting the property in the Project (such as tax delinquencies, assessment appeals, damage or destruction of improvements, or litigation), make it fiscally imprudent or infeasible to issue Mello-Roos Bonds; or

(v) the underwriter exercises any right to cancel its obligation to purchase Mello-Roos Bonds during the occurrence and continuation of events specified in its bond purchase agreement with the City.

5.3. Issuance.

(a) Financing Assumptions. The Port will ask the City to issue Mello-Roos Bonds secured and payable by Improvement Special Taxes in accordance with

assumptions in approved Phase Budgets, unless the Port determines that the assessed or appraised value of the applicable Taxable Parcels and the financing do not meet the minimum requirements in the CFD Goals. This Financing Plan is based on certain assumptions regarding Mello-Roos Bonds for the Project, summarized below.

(i) Special Debt Service on Mello-Roos Bonds issued will be secured and paid in part by Project Tax Increment as described in **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment) and in **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment).

(ii) Special Debt Service on Mello-Roos Bonds issued will be secured and paid in part by HB Tax Increment as described in **Section 11** (Historic Buildings).

(iii) The City may issue Mello-Roos-only Bonds secured and payable by Improvement Special Taxes, but not Tax Increment, to finance Excess Return.

(b) Meet and Confer.

(i) Developer will have the right to request through the Port that the City issue Mello-Roos Bonds. The City and the Port agree to meet and confer with Developer regarding its request.

(ii) Before the Port makes any request for the City to sell Mello-Roos Bonds, Port and City staff and consultants will meet and confer with Developer to discuss the terms of the proposed bond issue. The Port and the City in consultation with the Port's financing consultants will retain discretion to determine reasonable and appropriate issuance dates, principal amounts, and primary financing terms in light of the purpose of the financing, the CFD Goals, and the Port IFD Guidelines if applicable.

(c) Consistency with CFD Goals. Mello-Roos Bonds will be issued at the times, in the manner, and in the amounts that are consistent with the requirements set forth in the applicable Indenture and the CFD Goals.

(d) Payment of Debt Service in the Event of Delinquencies. If delinquencies in the payment of Improvement Special Taxes securing Mello-Roos Bonds results in an insufficient amount to pay the debt service on the applicable Mello-Roos Bonds, the CFD will use funds in the following order of priority to cover the shortfall:

(i) a draw on the debt service reserve held under the applicable Indenture; and

(ii) at the Port's sole option, a Port Capital Advance.

(e) Collection of Delinquencies. If delinquent Improvement Special Taxes are collected, they will be applied with regard to the applicable Mello-Roos Bonds in the following order of priority:

(i) for debt service on the applicable Mello-Roos Bonds, if required;

(ii) to replenish the applicable debt service reserve held under the applicable Indenture; and

(iii) reimbursement of any Port Capital Advance made to cure taxpayer delinquencies.

(f) Credit Enhancement.

(i) If the bond underwriter requires or recommends security to enhance the marketability of any Bonds or provide better terms, the Parties will cooperate to determine the form of security that would provide the greatest financial benefit to the Project. Measures may include designating a portion of Mello-Roos Bond Proceeds to fund capitalized interest, a letter of credit in the amount of a specified period of debt service, and a guaranty.

(ii) Neither Party will be required to provide credit enhancement, but a Party choosing to do so will be entitled to reimbursement of associated ancillary costs, such as issuance and annual fees, as Soft Costs recorded on the Developer Capital Schedule or the Port Capital Schedule, as applicable.

(g) Tax-Exempt or Taxable. Developer and the Port agree to cooperate to maximize the tax-exempt treatment of any Mello-Roos Bonds that the City issues, subject to the following.

(i) The Port and the City, after consultation with the Developer, will determine whether Bonds should be taxable or tax-exempt. Bond Counsel for the Port or the City, or both, will evaluate each proposed use of tax-exempt Bonds for the possibility of meeting the private use test (such as reserved parking spaces, management agreements longer than five years, etc.), the private payment test (as a result of revenue-sharing, transfer fees, Port participation in ground leases, etc.), and the private loan test under the Tax Code.

(ii) Bond Counsel for a planned Bond issue for the Project will determine whether all planned uses of the proceeds will qualify for tax-exempt treatment under the Tax Code.

5.4. Bond Indenture.

(a) Covenant to Foreclose. The Port will cause the City to covenant with Mello-Roos Bond bondholders to foreclose any lien of delinquent Improvement Special Taxes consistent with CFD Law, the general practice for community facilities districts in California, and otherwise as determined by the City in consultation with its underwriter or financial advisor for the Mello-Roos Bonds and other consultants.

(b) Reserve Fund Earnings. The Indenture for each issue of Mello-Roos Bonds will provide that earnings on any reserve fund that are not then needed to replenish the reserve fund to the reserve requirement will be transferred: (i) to the applicable Mello-Roos Improvement Fund for allowed uses until it is closed in accordance with the Indenture; and (ii) after the fund is closed, to the debt service fund held under the Indenture.

(c) Continuing Disclosure. Developer agrees to execute a continuing disclosure agreement if requested by an underwriter of Mello-Roos Bonds or any other financing consultant for the bonds. Developer must comply with all obligations under any continuing disclosure agreement that it executes in connection with the offering and sale of any Mello-Roos Bonds.

(d) No Recourse to General Fund or Harbor Fund. Under no circumstances will any bondholder of Mello-Roos Bonds issued under this Financing Plan have recourse to either the City General Fund or the Port Harbor Fund.

5.5. Mello-Roos Bonds for Phases.

(a) Intent to Issue Early Bonds.

(i) Under this Financing Plan, the Port will seek Board of Supervisors approval for the City to issue Early Mello-Roos Bonds as soon as feasible after formation of each CFD, the Reference Date, and the approval of each Later Phase, subject to **Subsection 5.3(a)** (Financing Assumptions). Port requests will also be timed to coordinate with each Phase Budget.

(ii) The Port will size each issue of Early Mello-Roos Bonds by the applicable Improvement Special Taxes and the Taxable Parcels to be taxed, value-to-lien limitations, and underwriter requirements. Although the Port intends to issue Early Mello-Roos Bonds in each Phase, it reserves the right to refrain from requesting issuance during the pendency of any of the circumstances described in **Subsection 5.2(c)** (Financing Temporarily Excused).

(iii) Any Early Mello-Roos Bonds issued in the Pier 70 Leased Property CFD shall not include the Facilities Special Taxes levied in Zone 3 (i.e., Historic Building 12 and Historic Building 21).

(b) Phase 1. Phase 1 Early Mello-Roos Bonds will be secured and payable by a pledge of Facilities Special Taxes from the Pier 70 Leased Property CFD other than Zone 3 and may be secured by Project Tax Increment to the extent described in a Pledge Agreement and **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service). To the extent Early Mello-Roos Bond Proceeds are available, they will be used in Phase 1 as follows.

(i) The Port will use an Advance of Parcel K North Proceeds (which will be net of the costs of the 20th/Illinois Parcel) and Pier 70 Condo CFD Proceeds available after paying for the Michigan Street segment to pay the Entitlement Sum determined under **Subsection 2.3(a)** (Entitlement Cost Statement) and accrued Developer Return.

(ii) Any remaining Early Mello-Roos Bond Proceeds will be used to pay the remaining Developer Balance and any Port Balance according to **Subsection 2.4(g)** (Pro Rata Payments), subject to the Interest Cost Limitation if applicable.

(iii) Any remaining Early Mello-Roos Bond Proceeds would then be used to pay Developer pass-throughs for Phase 1 as they become due.

(c) Security. Mello-Roos Bonds will be secured and payable by pledges of applicable categories of Mello-Roos Taxes, subject to Maximum Tax Rates, value-to-lien limitations, and underwriter requirements. Except for Bonds used to pay Excess Return, Special Debt Service on Mello-Roos Bonds may also be secured and payable by pledges of Project Tax Increment to the extent described in a Pledge Agreement and **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service) and Special Debt Service on Mello-Roos Bonds may also be secured and payable by pledges of HB

Tax Increment to the extent described in a Pledge Agreement and **Section 11.1** (Historic Buildings).

(d) Developer's Consent. By entering into the DDA, including this Financing Plan, Developer acknowledges that the Port has the right and obligation, in accordance with any Phase Budget subject to a Phase Approval, to request that the City issue Early Mello-Roos Bonds and agrees to pay any Facilities Special Taxes that become due before the Port conveys an encumbered Taxable Parcel to a Vertical Developer.

(e) Treatment of Developer's Early Special Tax Payments. In consideration of this agreement, the Port agrees that Developer's Special Tax payments made to service Early Mello-Roos Bonds under this Section will be Soft Costs recorded on the Developer Capital Schedule. The Parties acknowledge that, under the Tax Code in effect on the Reference Date, reimbursement of these costs may not be made with tax-exempt Bond Proceeds.

6. TAX INCREMENT

6.1. IFD Formation. In the IFD Formation Proceedings, the Port will ask the City to take the following actions with respect to the IFD.

(a) Agreement to Allocate Tax Increment. The City agreed to allocate to the IFD the Annual Allocated Tax Increment as set forth in the Port FY Budget for use in Project Area G in accordance with Appendix G-2 and this Financing Plan.

(b) Appointment of Port as Agent. The City appointed the Port as the IFD Agent with the authority to act on behalf of the IFD to implement this Financing Plan, including:

(i) disbursing Allocated Tax Increment as provided in Appendix G-2;

(ii) determining in collaboration with the Public Finance Division of the Controller's Office whether and in what amounts the IFD will issue Bonds;

(iii) directing the Indenture Trustees' disbursement of Bond Proceeds;

(iv) as security for Special Debt Service on any Mello-Roos Bonds, executing and delivering an agreement pledging the NOI Property Project Tax Increment first under **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment), then the Residential Condo Project Tax Increment under **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment);

(v) as security for Special Debt Service on any HB Bonds, executing and delivering an agreement pledging the HB Tax Increment under **Section 11** (Historic Buildings);

(vi) incurring and repaying indebtedness as set forth in Promissory Note-LP;

(vii) otherwise implementing the Funding Goals consistent with Governing Law and Policy; and

(viii) preparing on behalf of the IFD an annual Statement of Indebtedness in compliance with section 53395.8(i)(2) of the IFD Law reporting on the Sub-Project Areas' revenues and debts, listing the following debts:

(1) the obligation to apply any Allocated Tax Increment from Sub-Project Area G-2 as provided in Appendix G-2;

(2) the obligation to apply any Allocated Tax Increment from Sub-Project Area G-3 as provided in Appendix G-2;

(3) the obligation to apply any Allocated Tax Increment from Sub-Project Area G-4 as provided in Appendix G-2;

(4) obligations under Promissory Note-LP;

(5) any pledge of Tax Increment to secure Special Debt Service on Mello-Roos Bonds or other debts of the CFD;

(6) any Tax Increment Bonds issued by the IFD secured by NOI Property Project Tax Increment under **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment);

(7) any Tax Increment Bonds issued by the IFD secured by Residential Condo Project Tax Increment under **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment); and

(8) any other obligations undertaken to implement the Funding Goals in accordance with Governing Law and Policy.

6.2. Tax Allocation MOU. The Port is requesting that the Board of Supervisors authorize the Controller and the Treasurer-Tax Collector to enter into the Tax Allocation MOU with the Port under Charter section B7.320 in furtherance of the Financing Documents with respect to the IFD.

(a) Authorized Actions. The Board of Supervisors authorized and directed the following actions by approving the Tax Allocation MOU.

(i) The Treasurer-Tax Collector will levy and collect in a segregated fund Gross Tax Increment from each Sub-Project Area as directed by the Port as IFD Agent to the extent consistent with the Financing Documents.

(ii) The Controller will disburse Allocated Tax Increment from each Sub-Project Area and a portion of the Allocated Tax Increment from Sub-Project Area G-1 to the IFD for use in Project Area G as directed by the Port as IFD Agent to the extent consistent with Appendix G-1, Appendix G-2, the other Financing Documents, and the Port FY Budget.

(b) Required Cooperation and Consultation. The Port will consult with the Public Finance Division of the Controller's Office on timing, amounts, and other matters relating to Bonds. The Port, the Treasurer-Tax Collector, and the Controller will cooperate to ensure that the objectives of the Financing Documents will be fulfilled.

6.3. Sub-Project Area Tax Increment.

(a) Special Fund for Tax Increment. Section 53396(b) of the IFD Law requires tax increment to be allocated to and paid into a special fund of the district. In compliance with this requirement, the Port has established the Tax Increment Fund in the Special Fund Trust Account with the following segregated accounts for each Sub-Project Area: (i) Project Account; (ii) Port Account; and (iii) Shoreline Account.

(b) Waterfront Set-Aside. Under section 53395.8(g)(3)(C)(ii) of the IFD Law, the IFD may spend the Waterfront Set-Aside "solely on shoreline restoration, removal of bay fill, or waterfront public access to or environmental remediation of the San Francisco waterfront." Both Parties acknowledge that the IFD Law will prevail over any conflicting provision in this Financing Plan and Appendix G-2.

(c) IFD Administrative Costs. Appendix G-2 authorizes the IFD to fund IFD Administrative Costs from Annual Allocated Tax Increment.

(d) Priority of NOI Property Project Tax Increment. The IFD is authorized to use NOI Property Project Tax Increment from each Sub-Project Area in the priority listed below:

(i) to pay Special Debt Service on Mello-Roos Bonds as described in **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service) and **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service);

(ii) to fund the Leased Property Backup Fund to the Leased Property Backup Fund Requirement;

(iii) to pledge as security and pay for Tax Increment Bonds;

(iv) to satisfy the Project Payment Obligation, including the Historic Building Feasibility Gap as provided in **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service), subject to the Interest Cost Limitation;

(v) to pay Developer pass-throughs;

(vi) to make PNLP Payments, subject to the Interest Cost Limitation;

(vii) after the Project Payment Obligation is satisfied, to pay directly or pledge as security for Bonds for Shoreline Protection Facilities, including Pier 70 Shoreline Protection Facilities;

(viii) to enter into other arrangements to use Project Tax Increment, subject to the Governing Law and Policy including the Interest Cost Limitation, to repay advances of Facilities Special Taxes or proceeds of Mello-Roos-only Bonds used to pay Horizontal Development Costs consistent with the Funding Goals; and

(ix) subject to Port Commission and Board of Supervisors approval, for any other purpose authorized by Appendix G-2 and IFD Law.

(e) Priority of Residential Condo Project Tax Increment. The IFD is authorized to use Residential Condo Project Tax Increment from each Sub-Project Area in the priority listed below:

(i) to pledge as security and pay for Tax Increment Bonds;

(ii) to pay Special Debt Service on Mello-Roos Bonds as described in **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service) and **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service);

(iii) to fund the Leased Property Backup Fund to the Leased Property Backup Fund Requirement;

(iv) to satisfy the Project Payment Obligation, including the Historic Building Feasibility Gap, as provided in **Subsection 11.2(a)** (Agreement to Reimburse for Historic Building Feasibility Gap), subject to the Interest Cost Limitation;

(v) to pay Developer pass-throughs;

(vi) to make PNLP Payments, subject to the Interest Cost Limitation;

(vii) after the Project Payment Obligation is satisfied, to pay directly, issue Bonds, or pledge as security for Bonds for Shoreline Protection Facilities, including Pier 70 Shoreline Protection Facilities;

(viii) to enter into other arrangements to use Project Tax Increment, subject to the IFD Law including the Interest Cost Limitation, to repay advances of Facilities Special Taxes or proceeds of Mello-Roos-only Bonds used to pay Capital consistent with the Funding Goals as otherwise permitted under Governing Law and Policy; and

(ix) subject to Port Commission and Board of Supervisors approval, for any other purpose authorized by Appendix G-2 and IFD Law.

6.4. Port Tax Increment. The Port will use Port Tax Increment to finance Irish Hill Park, the Historic Building Feasibility Gap to the extent described in **Article 11** (Historic Buildings), and Improvements at Pier 70 outside of the 28-Acre Site as authorized in Appendix G-2. The Port may choose to perform any authorized project as a public work using Port and City staff or a construction manager that is paid a fee for its services. Authorized projects include those listed below.

(a) Use. The Port will use Port Tax Increment to pay directly for or reimburse a third party for the costs to plan, design, and build the Port Improvements at the Illinois Street Parcels, other maritime uses eligible under IFD Law, and Shoreline Protection Facilities.

(b) Historic Building Feasibility Gap: The Port will use Port Tax Increment to subsidize the Historic Building Feasibility Gap as set forth in **Section 11.1** (Subsidy for Historic Buildings 12 and 21).

(c) Historic Resources. The Port may use Port Tax Increment to pay the costs to rehabilitate historic resources at Pier 70, but outside of the 28-Acre Site, according to the Secretary's Standards.

6.5. Sub-Project Areas.

(a) Base Year. Under IFD Law, the base year for Project Area G, including all of its sub-project areas, is City Fiscal Year 2015-2016.

(b) ERAF Tax Increment.

(i) The IFD Formation Proceedings and Appendix G-2 authorize the allocation of Allocated Tax Increment to the IFD for use in Project Area G. Allocated Tax Increment initially will consist of:

(1) the City Share of Tax Increment (64.59% of each property tax increment dollar in FY 2015-2016); and

(2) the ERAF Tax Increment (25.33% of each property tax increment dollar in FY 2015-2016).

(ii) To ensure that the IFD receives the maximum amount of Allocated Tax Increment for the benefit of the Project, the Port and Developer agree to use ERAF Tax Increment from each Sub-Project Area to pay Developer pass-throughs for Public Facilities before Developer Capital or any other available Public Financing Source is used.

(iii) After the ERAF Debt Period for each Sub-Project Area expires, no further Bonds secured and payable by ERAF Tax Increment will be issued.

(iv) Because the Sub-Project Areas are required to use ERAF Tax Increment for Horizontal Development Costs of Public Facilities, the following will apply separately for each Sub-Project Area and to any Bonds secured and payable by ERAF:

(1) the Bonds will be considered to be issued in the first City Fiscal Year in which the Sub-Project Area uses ERAF Tax Increment to pay any Horizontal Development Costs of Public Facilities; and

(2) the Bonds must be repaid no later than 45 years after the date the IFD actually receives $100,000 of Allocated Tax Increment from each Sub-Project Area.

(c) IFD Cap. Subject to the IFD Cap, Appendix G-2 authorizes the allocation of Tax Increment to the IFD for use in Project Area G beginning in the City Fiscal Year following the applicable Sub-Project Area's formation and continuing for 45 years after the date the Sub-Project Area actually receives $100,000 of Allocated Tax Increment.

(d) Pledge of Tax Increment.

(i) The IFD will use Tax Increment from each Sub-Project Area for the purposes specified in this Financing Plan. The Port will ask the Board of Supervisors to authorize the IFD to incur debt and to pledge and use Tax Increment as provided in Appendix G-2 and this Financing Plan in the IFD Formation Proceedings.

(ii) As described in **Article 7** (Port Advances), the Port intends to meet the Project Payment Obligation under this Financing Plan in part by making

Advances of Land Proceeds and Port Capital Advances to the Pier 70 CFDs. Under IFD Law, "debt" includes the Developer Balance, the Port Balance, and amounts owing under Promissory Note-LP.

(iii) The IFD Cap does not limit the amount of debt that the Port, the CFD, or the IFD will undertake under this Financing Plan. The Port represents and warrants that it has not, in its capacity as IFD Agent, made any pledges of Tax Increment from any of the Sub-Project Areas to any other debt as defined under IFD Law.

(e) Acquisition Prices. In accordance with IFD Law section 53395.8(g)(12), the Acquisition Agreement for the Acquiring Agencies' purchases of Horizontal Improvements specifies a price or method to determine a price for each public facility or discrete portion or phase of a facility. In addition, the Horizontal Development Costs of Horizontal Improvements will be reimbursed under this Financing Plan with an amount reflecting the interim cost of financing construction. Payments under this Financing Plan and the Acquisition Agreement using Project Tax Increment or the proceeds of Bonds secured and payable by Project Tax Increment will be subject to the Interest Cost Limitation.

(f) Increment Carryover. As long as Developer is not in Material Breach of the DDA, Project Tax Increment remaining after payment of all costs and debt incurred for Horizontal Development Costs in any Current Phase will be available for use in a Later Phase, subject to the 5-year limit on accumulation of tax increment under IFD Law section 53395.2 and other provisions of Governing Law and Policy.

(g) Waterfront Set-Aside. The Board of Supervisors has approved Appendix G-1, and the Port Commission has requested that the Board of Supervisors approve Appendix G-2. IFD Law and Appendix G-2 as proposed will allow the Waterfront Set-Aside requirement applicable to Project Area G to be met on a Project Area G-wide basis rather than on a Sub-Project Area basis. Appendix G-1 provides that the Port's use of more than 20% of the Allocated Tax Increment from Sub-Project Area G-1 on Waterfront Set-Aside would allow the IFD, in the discretion of the Port as IFD Agent, to set aside less than 20% of Allocated Tax Increment from the Sub-Project Areas for the Waterfront Set-Aside.

(h) Application of Tax Increment to Special Debt Service. This Subsection describes how Project Tax Increment will be credited to Assessed Parcels in the Pier 70 Leased Property CFD (other than Zone 3, which is governed by **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service) to offset the levy of Facilities Special Taxes needed for debt service on Mello-Roos Bonds issued on behalf of the CFD. Any references in this **Subsection** to property in the Pier 70 Leased Property CFD shall mean only the property located in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD. The offset of Facilities Special Taxes for property in Zone 3 of the Pier 70 Leased Property CFD is governed by **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service). Project Tax Increment will not be used to reduce Shoreline Special Taxes, Arts Building Special Taxes, or Services Special Taxes in the Pier 70 Leased Property CFD.

(i) *Step 1*. By May 30 in each City Fiscal Year, the Treasurer-Tax Collector will prepare a Payment Report that specifies the NOI Property Project Tax Increment and the Residential Condo Project Tax Increment for each Taxable Parcel in the IFD. The IFD Agent will verify the amount of Available Credit Tax Increment, which will consist of Project Tax Increment on deposit with the

Special Fund Trustee that is available to pay Special Debt Service on Mello-Roos Bonds from the following sources in the following order of priority:

(1) NOI Property Project Tax Increment;

(2) Residential Condo Project Tax Increment remaining after its use under **clause (i)** of **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment); and

(3) the Leased Property Backup Fund.

(ii) *Step 2*. At the beginning of the next City Fiscal Year, the CFD Administrator will:

(1) advise the Treasurer-Tax Collector of the Potential Facilities Special Tax Levy on each NOI Property; and

(2) deliver to the Treasurer-Tax Collector and the Controller an Assessed Parcel Credit Report that specifies the amount of the Facilities Special Tax Credit available to offset the Potential Facilities Special Tax Levy for each Current Parcel in the Pier 70 Leased Property CFD.

(iii) *Step 3 Alternative 1*: If the Available Credit Tax Increment is equal to or greater than the Potential Facilities Special Tax Levy on each Current Parcel as shown in the Assessed Parcel Credit Report, the following will apply to the current City Fiscal Year.

(1) Based on the Assessed Parcel Credit Report, the Controller will direct the disbursement of: (A) the amount of Available Credit Tax Increment equal to the Potential Facilities Special Tax Levy on all Current Parcels to the Mello-Roos Bond debt service account designated by the CFD Administrator; and (B) the balance to the Project Account of the Tax Increment Fund.

(2) The CFD Administrator will not levy any Facilities Special Taxes on the Current Parcels in the Pier 70 Leased Property CFD for the City Fiscal Year.

(3) The CFD Administrator will levy the Potential Facilities Special Tax Levy on every Taxable Parcel other than the Current Parcels according to the RMA.

(iv) *Step 3 Alternative 2*. If the Available Credit Tax Increment is less than the Potential Facilities Special Tax Levy on each Current Parcel as shown in the Assessed Parcel Credit Report, the following will apply to the current City Fiscal Year:

(1) Based on the Assessed Parcel Credit Report, the Controller will direct the disbursement of all Available Credit Tax Increment to the applicable Mello-Roos Bond debt service account designated by the CFD Administrator.

(2) Because Available Credit Tax Increment is not sufficient to offset the Potential Facilities Special Tax Levy on each Current Parcel, the

CFD Administrator will apply the specific Parcel Increment Amount to the Current Parcel that generated it.

(3) The CFD Administrator will apply any remaining Available Credit Tax Increment on a pro rata basis (based on the Potential Facilities Special Tax Levy of the Current Parcels in the City Fiscal Year) to each Current Parcel until the amount applied is equal to the Potential Facilities Special Tax Levy for a Current Parcel or the Available Credit Tax Increment is fully applied.

(4) The CFD Administrator will levy Facilities Special Taxes in the City Fiscal Year on each Current Parcel in the amount equal to the Current Parcel's Potential Facilities Special Tax Levy after applying the amounts under **paragraph (2)** and **paragraph (3)** of this alternative.

(5) The CFD Administrator will levy the Potential Facilities Special Tax Levy on every Taxable Parcel other than the Current Parcels according to the RMA.

(v) Leased Property Backup Fund.

(1) The Leased Property Backup Fund will be funded from Project Tax Increment in accordance with **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment) and **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment) and held by the Special Fund Trustee, and will be drawn upon to pay the Special Debt Service on each Current Parcel if Project Tax Increment is insufficient for that purpose. When fully funded, the Leased Property Backup Fund will hold deposits equal to the Leased Property Backup Fund Requirement to provide funds to offset Facilities Special Taxes for which credits can be made under **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service)

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(2) The Parties understand that the Tax Code imposes certain conditions on creation and maintenance of the Leased Property Backup Fund. In any given City Fiscal Year, the IFD will not be authorized to use Project Tax Increment for items lower in priority than the Leased Property Backup Fund until funds in the Leased Property Backup Fund meet Leased Property Backup Fund Requirement.

6.6. Tax Increment Bonds.

(a) Authorization to Issue. Appendix G-2 authorizes the IFD to issue Tax Increment Bonds in compliance with Governing Law and Policy, subject to the same Project-based constraints, limitations, and procedures applicable to Mello-Roos Bonds under this Financing Plan. The Parties anticipate seeking issuance of Tax Increment Bonds to fund the Project Payment Obligation secured, on a first-priority basis, from Residential Condo Project Tax Increment and, on a subordinate basis, from NOI Property Project Tax Increment. Any reference in this Financing Plan to the Project Share of Tax Increment or Mello-Roos Bonds secured and payable by Project Tax Increment will also mean the proceeds of any Tax Increment Bonds that the City issues for those purposes.

(b) Condition to Issuance. The IFD will not issue Tax Increment Bonds secured by the NOI Property Project Tax Increment until the Leased Property Backup Fund has reached its Leased Property Backup Fund Requirement.

6.7. **Validation.** Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the Sub-Project Areas and matters authorized under Appendix G-2 and this Financing Plan. Attorneys' fees associated with these validation actions will be Port Costs or City Costs that are reimbursable under **Section 9.2** (Port Accounting and Budget).

7. PORT ADVANCES

7.1. Port Revenues.

(a) Allowed Uses of Port Revenues. Under the Burton Act, AB 418, and Charter section B6.406, Land Proceeds and Port Capital are public trust revenues that must be deposited into the Port Harbor Fund. Once deposited into the Port Harbor Fund, the Port may spend those revenues subject to any priorities established under any Indenture or other debt instrument secured and payable by those funds, for:

(i) uses specified in section 3 and section 5 of the Burton Act;

(ii) uses specified in Charter appendix B;

(iii) uses specified in AB 418 and any other state legislation authorizing Port expenditures; and

(iv) other uses consistent with the public trust.

(b) Trust Consistency. The Port Commission has determined that the Port's use and handling of Land Proceeds and Port Capital as specified in this Financing Plan are authorized under AB 418 and the Charter and are otherwise consistent with the public trust and the Burton Act.

7.2. **Port Election**. At its sole election and subject to **Section 1.7** (Additional Sources), the Port will have the right to use any source that is less costly than Developer Capital for purposes consistent with this Financing Plan. The procedures applicable to the Port's decisions to use Port Capital are described in **Subsection 7.5(a)** (Port's Right) and are expressly excluded from **Section 1.7** (Additional Sources). Each Port Advance will be treated as specified in this Article.

7.3. Advances of Land Proceeds.

(a) Use of Land Proceeds. The Port will use Land Proceeds to make Advances of Land Proceeds to the Pier 70 CFDs to the extent necessary to pay Capital Costs whenever Land Proceeds are available. Until advanced, Land Proceeds are deemed deposited into the Port Harbor Fund by deposit into any Escrow Account, the Land Proceeds Fund, or the Revenue Account in accordance with this Financing Plan.

(b) Promissory Note-LP and Promissory Note-X.

(i) Before the Port makes the first Advance of Land Proceeds by application of cash or a Credit Bid to the Project Payment Obligation, the CFD

Agent will sign Promissory Note-LP in the form of **FP Exhibit C** and Promissory Note-X in the form of **FP Exhibit D** and deliver them to the Port.

(ii) Contemporaneously with each Advance of Land Proceeds, the CFD Agent will provide to the Port the following information with respect to the application of funds:

(1) the date and Phase to which each entry applies;

(2) amounts applied to pay the Developer Balance, accounting separately for amounts applied to the Entitlement Sum, Developer Capital spent on other Horizontal Development Costs, Allowed Developer Return, and Excess Return;

(3) amounts applied to pay the Port Balance, accounting separately for amounts spent on Horizontal Development Costs, Allowed Return on Port Capital, and Excess Return; and

(4) amounts used or reserved to pay Developer pass-throughs as they become due.

(iii) The Port will enter on the allonge to Promissory Note-X the date, Phase, and any portion of an Advance of Land Proceeds used to pay Excess Return to Developer or Excess Return to the Port. The Port will enter on the allonge to Promissory Note-LP all other information regarding the Advance.

(iv) Interest will begin to accrue on each Advance of Land Proceeds from the date of the Advance at an annual rate to be agreed upon by Port and Developer before the parties seek Board of Supervisors approval of the resolutions approving the CFD Formation Proceedings, compounded quarterly, until paid.

(v) The CFD Agent or IFD Agent will make PNLP Payments to the Port to from time to time as Public Financing Sources become available.

(1) PNLP Payments will have priority over other uses of tax-exempt Bond Proceeds if necessary to comply with Treasury Regulation section 1.150-2 and maximize the amount of tax-exempt Bond Proceeds that can be used to make PNLP Payments.

(2) Contemporaneously with each PNLP Payment, the Port will make entries on the allonge to specify the application of funds. PNLP Payments will be applied first to pay accrued interest, then to principal in chronological order of each Advance of Land Proceeds.

(3) Subject to **Section 3.6** (Interim Satisfaction), until Horizontal Improvements are complete and the Project Payment Obligation is satisfied, the CFD Agent will deposit PNLP Payments into the Land Proceeds Fund for use as a Project Payment Source.

(4) After the Chief Harbor Engineer has issued SOP Compliance Determinations for all Horizontal Improvements and the Port has accepted the Final Audit, the CFD Agent will deposit PNLP Payments

into the Revenue Account for disbursements of the Developer Share and the Port Share.

(vi) Neither the CFD Agent nor the IFD Agent will make any payments on Promissory Note-X until the Project Payment Obligation and Promissory Note-LP have been paid in full unless the Parties provide countersigned instructions otherwise or the Port provides proof of payment in full.

7.4. 20th/Illinois Parcel Land Proceeds. The Port Commission and the Board of Supervisors have authorized the Port to publicly offer and sell the 20th/Illinois Parcel, subdivided into Parcel K North and Parcel K South, at Fair Market Value. The Advance of Land Proceeds from the sale of Parcel K North will be treated as specified in **Subsection 7.3(b)** (Promissory Note-LP and Promissory Note-X).

(a) Parcel K North.

(i) The Port has established Parcel K North's Fair Market Value based on its highest and best use by a proprietary appraisal, which the Port has used to establish a minimum offering price for Parcel K North. The Port has begun the process to publicly offer the parcel for sale in accordance with the Port's customary procedures. The offering is open to all qualified bidders, including Developer.

(ii) The bid documents specify as follows.

(1) The winning bidder must deposit the purchase price and Developer Closing Costs into Escrow and Close of Escrow must occur as set forth in the DDA.

(2) The Port may require the purchasers to build the 20th/Illinois Plaza. In that circumstance, the offering documents will specify an allowance for the required Improvements, and the amount of each offset will be deemed to be an Advance of Land Proceeds.

(3) The Port may require the purchasers to build the Michigan Street segment as the Port's fee developer. In that circumstance, the offering documents will specify a cost allowance that the Port will pay with the Mello-Roos Bond Proceeds secured and payable by Facilities Special Taxes levied in the Pier 70 Condo CFD.

(iii) If the winning bidder is an Unrelated Vertical Developer, the Port will instruct the Escrow Agent to disburse the Parcel K North Proceeds in the following order of priority from Escrow at Closing as follows, until the funds have been disbursed fully:

(1) an Advance of Land Proceeds to pay Excess Return included in the Entitlement Sum and Excess Return accrued since the Reference Date;

(2) an Advance of Land Proceeds to pay the balance of the Entitlement Sum and Allowed Developer Return accrued since the Reference Date;

(3) an Advance of Land Proceeds to pay the Developer Balance and the Port Balance, subject to **Subsection 2.7(a)** (Pro Rata Payments); and

(4) for deposit into the Land Proceeds Fund.

(iv) If Developer is the winning bidder, its selected Vertical Developer Affiliate may pay at least in part by Credit Bid subject to all limitations and conditions of **Section 3.3** (Right to Credit Bid) and **Section 3.4** (Amount of Credit Bid). The Credit Bid will be recorded as an Advance of Land Proceeds.

(v) This clause will apply only if the Closing has not occurred by the first anniversary of the Reference Date, and the delay is not caused by Environmental Delay, Litigation Delay, or Developer's acts or omissions. In 60 days after the first anniversary of the Reference Date, the Port must elect one of the following options.

(1) The Port may elect to make an Advance to the CFD in an amount equal to the appraised Fair Market Value of Parcel K North, which will be treated as an Advance of Land Proceeds and applied as set forth in **clause (iii)** of this Subsection. Under this election, the proceeds of any later Port sale of Parcel K North would be Harbor Fund Revenues free of any restrictions under this Financing Plan.

(2) The Port may make an offer to sell Parcel K North to a Vertical Developer Affiliate at its appraised Fair Market Value by a Credit Bid subject to all limitations and conditions of **Section 3.3** (Right to Credit Bid) and **Section 3.4** (Amount of Credit Bid) and otherwise on terms specified in the bid package and the Vertical DDA for the parcel, except the requirement for an appraisal under *DDA art. 7 (Parcel Conveyances)*. If sold under this clause, the Credit Bid will be treated as an Advance of Land Proceeds.

7.5. Port Capital Advances.

(a) Port's Right. The Port has the right to make a Port Capital Advance when Land Proceeds and Public Financing Sources are not projected to be available to pay for projected Horizontal Development Costs, subject to the following limitations to allow for a coordinated plan of finance and associated capital formation activities by Developer.

(i) During its review of a Phase Budget, the Port may commit to make a Port Capital Advance, separate from or including the Port Share of any Interim Satisfaction Balance, by providing notice to Developer in 60 days after Developer submits the proposed Phase Budget.

(ii) The Port may propose to make a Port Capital Advance at other times during a Phase. To do so, the Port must notify Developer of the proposed amount and use of Port Capital at least six months before the projected date of a capital expense (which may be a Developer pass-through) in the Phase Budget.

(iii) The Parties will meet and confer promptly after the Port's notice to agree on the timing and amount of any proposed Port Capital Advance. After the Parties have agreed, the Port must deposit the agreed amount of Port Capital in the Port Capital Advance Fund held by the Special Fund Trustee at least

four months before the agreed date. Developer must exhaust the Port Capital Advance before spending Developer Capital.

(iv) Port Capital Advances may be used to pay Developer pass-throughs for Phase Improvements that would otherwise be paid by Developer Capital or to reimburse Developer for costs of Phase Improvements when no Public Financing Sources are available. If the Port uses a Port Capital Advance to reimburse Developer for costs of Phase Improvements when no Public Financing Sources are available, then **clauses (i)-(iii)** of this Subsection will not apply.

(b) Delivery and Use of Port Capital Advances.

(i) If the Port meets the time frames in **clause (i)** and **clause (ii)** of **Subsection 7.5(a)** (Port's Right), but the funds are subject to the annual City budget process, the Port must deliver the funds to the Special Fund Trustee for deposit in the Port Capital Advance Fund no later than three months after the Board of Supervisors approves the appropriation.

(ii) If the funds are Project-generated, such as the Port Share of any Interim Satisfaction Balance, the Port must direct the Escrow Agent to disburse the funds from Escrow to the Special Fund Trustee for deposit in the Port Capital Advance Fund.

(c) Port Capital Advances.

(i) Contemporaneously with each Port Capital Advance, the Port will enter on the Port Capital Schedule the following information with respect to the application of funds:

(1) the date and Phase to which each entry applies; and

(2) amounts applied to pay the Entitlement Sum and other Capital Costs.

(ii) Return on Port Capital will begin to accrue on the date each Port Capital Advance is disbursed at the annual rate of 10%, compounded quarterly, until paid.

(iii) The Port will update the Port Capital Schedule after any quarter in which it makes a Port Capital Advance or receives a payment under **Subsection 2.4(g)** (Pro Rata Payments) to provide ongoing updates of the status of the Port Balance.

(d) Port Withdrawal from Port Capital Advance Fund. If both of the following conditions are satisfied, the Port may withdraw funds in the Port Capital Advance Fund.

(i) An Interim Satisfaction Event exists.

(ii) Project Payment Sources will be available when needed to pay for all remaining Phase Improvement Costs in the Phase Budget.

7.6. CFD Payment Obligations.

(a) Sources to Repay Port Advances.

(i) Subject to the Interest Cost Limitation as applicable, the Pier 70 CFDs may use Public Financing Sources to pay Promissory Note-LP and Promissory Note-X.

(ii) The Pier 70 CFDs will be authorized to direct the Special Fund Trustee to disburse funds in the Land Proceeds Fund in accordance with **Subsection 2.4(f)** (Priorities for Payments) to pay Port Capital Costs.

(b) Port Harbor Funds. Funds that the Pier 70 Leased Property CFD and the Pier 70 Condo CFD pay to the Port for Port Capital Costs will be Port Harbor Revenues upon delivery to the Port. Payments will be recorded on the Port Capital Schedule.

(c) Promissory Note-LP.

(i) All PNLP Payments to the Port will be deemed Land Proceeds and will be deposited and used in accordance with **clause (v)** of **Subsection 7.3(b)** (Promissory Note-LP and Promissory Note-X).

(ii) Promptly after accepting the Final Audit, as adjusted under **Subsection 3.10(a)** (Distribution of Land Proceeds after Final Audit), the Port will execute and deliver to Developer the assignment attached to Promissory Note-LP, dated as of the date the Port accepts the Final Audit. The Port will provide copies of the assignment contemporaneously to the CFD Agent and the Special Fund Trustee.

(iii) All amounts in the Land Proceeds Fund will be disbursed in accordance with **Subsection 3.2(c)** (Revenue Sharing). Disbursements will not be recorded on the Developer Capital Schedule or the Port Capital Schedule.

(d) Promissory Note Entries. The Port agrees to make contemporaneous entries on Promissory Note-LP Promissory Note-X, and the Port Capital Schedule to track Advances of Land Proceeds, Port Capital Advances, the accrual of Interest on Land Proceeds, Return on Port Capital, and the application of Project Payment Sources to Promissory Note-LP, Promissory Note-X, and Port Capital Costs.

8. ACQUISITION OF HORIZONTAL IMPROVEMENTS

8.1. Commercially Reasonable Costs.

(a) Deemed Reasonableness. For work described in Developer's construction contracts, not including change orders, any Horizontal Development Cost that Developer incurs will be deemed commercially reasonable and to represent the fair market value price of a Horizontal Improvement if: (i) the contract is secured through a competitive bid process with three or more qualified firms and awarded to the lowest responsible bidder; (ii) the contract meets the requirements in **Subsection 8.1(c)** (Sole Source Contracts); or (iii) the contract has a value of $250,000 or less.

(b) Lowest Responsible Bidder. Developer will select the lowest responsible bidder after considering price and proposed schedule, with other factors such as the

contractor's ability to contribute to Developer's obligations under the Workforce Program, Local Hiring, and other contracting goals and requirements, financial strength, proposed project team, and any unique benefits offered to the Project.

(c) Sole Source Contracts. If Developer selects a contractor to perform a particular scope as a sole source, Developer must validate the bid by:

(i) providing the Port with an analysis of Soft Costs relative to the expected Project budget;

(ii) providing the Port with an engineer's cost estimate for Hard Costs; or

(iii) demonstrating that the product or service is available from only one supplier in the Bay Area region.

(d) Port Validation. The Port may hire a third-party consultant to validate Developer's estimated Hard Costs and Soft Costs when evaluating the commercial reasonableness of Horizontal Development Costs. If the Parties disagree as to commercial reasonableness, *DDA § 14.4(c) (Disputes)* will apply, and they may agree to submit any disputes as to commercial reasonableness of Horizontal Development Costs in accordance with for resolution under *DDA § 10.5 (Nonbinding Arbitration).*

(e) Satisfaction of CFD Law. The parties have determined that the provisions of this Subsection 8.1 (Commercially Reasonable Costs) and the provisions of the Acquisition Agreement satisfy Government Code Section 53314.9.

8.2. Guaranteed Maximum Price Contract.

(a) Selection Process. If Developer uses a Guaranteed Maximum Price form of contract, it will select a CM-GC in accordance with **Subsection 8.1(a)** (Deemed Reasonableness) and **Subsection 8.1(b)** (Lowest Responsible Bidder) before the preconstruction period.

(b) Bid Requirements. In its bid, the CM-GC must identify the following:

(i) preconstruction costs;

(ii) General Conditions as a fixed monthly cost for the staff and support necessary to complete the Horizontal Improvements;

(iii) a construction management fee as a fixed percentage to be applied to the cost of Horizontal Improvements;

(iv) a preliminary estimate for the cost of the Horizontal Improvements; and

(v) any Horizontal Improvements the CM-GC intends to self-perform.

(c) Contract Negotiations.

(i) At the end of the preconstruction period, Developer will negotiate a GMP contract based on budgeting and estimating performed by the CM-GC in

collaboration with various sub-trades at various design milestones during preconstruction.

(ii) Developer will have the option to proceed under the negotiated GMP contract terms or terminate the CM-GC and issue a new bid solicitation for in accordance with **Subsection 8.1(a)** (Deemed Reasonableness) and **Subsection 8.1(b)** (Lowest Responsible Bidder). The selected CM-GC will be required to solicit competitive bids in accordance with **Section 8.1** (Commercially Reasonable Costs) for each sub-trade package including work it wishes to self-perform.

(iii) GMP contract terms will limit contingency to less than 15% unless it is determined by a competitive bidding process that the market terms for contingency are higher than 15%, in which case the contingency may be set consistent with market terms and Developer will notify Port of the contingency amount.

(iv) Customary incentives to ensure performance actually paid to the CM-GC under the GMP contract will be considered a commercially reasonable cost of the contract.

8.3. Progress Payments. Under this Financing Plan and procedures in the Acquisition Agreement, the Port will make progress payments from time to time using Project Payment Sources as each source becomes available. If the Developer Balance and the Port Balance are both zero when the Project Payment Sources are available, and the funds are not subject to priorities under this Financing Plan, the funds will be applied to Developer pass-throughs.

8.4. Payment Conditions. Developer acknowledges that it must satisfy all conditions to payment in the Acquisition Agreement before the Port will be obligated to approve a Payment Request for Horizontal Development Costs of Horizontal Improvements.

8.5. Reimbursements for Horizontal Development Costs. Developer and the Port acknowledge the following.

(a) Expenditures in Reliance of Reimbursement and Return. Developer's use of Developer Capital before Land Proceeds and Public Financing Sources are available is not a gift or a waiver of Developer's right to reimbursement for Horizontal Development Costs and to receive Developer Return.

(b) Payments in Installments. Developer will be reimbursed for Horizontal Development Costs and receive Developer Return in installments as Project Payment Sources become available in accordance with this Financing Plan and the Acquisition Agreement, and Developer Return will accrue on any unpaid balance until the Developer Balance is satisfied by all available Project Payment Sources.

(c) Limited Project Revenues and Sources.

(i) Both Parties wish to use Public Financing Sources to the greatest extent and as early as feasible for Horizontal Development Costs.

(ii) Developer expressly acknowledges that:

(1) the Port's Public Financing Sources to pay Excess Return will be limited to Mello-Roos Taxes and Mello-Roos-only Bonds;

(2) the Port's and the financing districts' payment obligations are not guaranteed and are subject to **Section 1.8** (Limitation on Sources); and

(3) while the Port may elect in its sole discretion to make Port Capital Advances for the Project, it is under no obligation, and may not be compelled, to use Port Capital except to the extent that it makes a commitment to do so under **Section 7.5** (Treatment of Port Capital Advances).

(d) Termination of Acquisition Agreement. The Acquisition Agreement is an independent contract that will survive termination of this Financing Plan unless the Acquisition Agreement has expired on its own terms.

9. REPORTING

9.1. Developer Accounting.

(a) Phase Accounts. Developer agrees to establish and maintain separate Phase Accounts for each Phase in form reasonably approved by the Port to track Developer's Horizontal Development Costs as they are incurred, the accrual of Developer Return on its unreimbursed Horizontal Development Costs, and the application of Project Payment Sources to Developer's Capital Costs. Each Phase Account must calculate separately accrual of Developer Return up to the Interest Cost Limitation and accrual of Excess Return.

(b) Developer Quarterly Reports. Quarterly, after the date of each Phase Approval and continuing until the Project Payment Obligation has been fully satisfied, Developer will prepare and deliver to the Port a Developer Quarterly Report in a form reasonably acceptable to the Port. Developer Quarterly Reports must include the following information, reported separately for each Phase for which Developer has obtained a Phase Approval and in the aggregate for the Project as a whole:

(i) if applicable, a statement of Horizontal Development Costs previously incurred by Developer but not yet reimbursed;

(ii) updated estimates if any have been prepared, of additional Horizontal Development Costs to be incurred as specified in this Subsection;

(iii) accrued paid and unpaid Developer Return, accounting separately for Developer Return up to the Interest Cost Limitation and Excess Return;

(iv) if applicable, adjustments to the prior Developer Quarterly Report;

(v) application of Project Payments Sources that Developer has received during the reporting period, accounting separately for each source;

(vi) new development expected to occur or that is occurring, and, if available to the Developer, the assessed value of which is expected to be included

on the secured real property tax roll in the City Fiscal Year before the Later Phase Developer Quarterly Report will be due;

(vii) any conveyances of Development Parcels that are expected to occur and if, based on available information, Developer reasonably expects the assessed value will be included on the secured real property tax roll for a City Fiscal Year before the Later Phase Developer Quarterly Report will be due;

(viii) Cumulative IRR, accounting for any distributions of Interim Satisfaction Balance and anticipated future distributions for the Current Phase;

(ix) Port Costs and Other City Costs, billed, paid, and unpaid; and

(x) specific uses of Master Marketing Fees that Developer collects from Vertical Developers or their successors.

(c) Effect of Termination.

(i) Subject to **clause (ii)** of this Subsection, Developer Quarterly Reports must cover all Phases, even if Developer has Transferred part or all of its interest in a Phase to an Unrelated Transferee.

(ii) Developer's obligation to provide Developer Quarterly Reports will terminate as to any Terminated Phase after Developer has provided to the Port the Developer Quarterly Report covering the reporting period ending on the applicable Termination Date.

(iii) Developer will be obligated to provide a Phase Audit under **Subsection 9.3(a)** (Phase Audit) for any Terminated Phase covering the Phase up to the Termination Date and to cooperate with any successor master developer to the extent necessary for the successor to complete any Phase Audit required under **Subsection 9.3(a)** (Phase Audit) and Final Audit required under **Subsection 9.3(b)** (Final Audit).

9.2. Port Accounting and Budget.

(a) Accounting for Use of Port Capital. Quarterly, after the date of each Phase Approval and continuing until the Project Payment Obligation has been fully satisfied, the Port will prepare and deliver to the Developer a Port Quarterly Report in a form reasonably acceptable to the Developer. Port Quarterly Reports must include the following information, reported separately for each Phase for which Developer has obtained a Phase Approval and in the aggregate for the Project as a whole: (i) all entries under **Subsection 7.6(d)** (Promissory Note Entries); (ii) accrued paid and unpaid Return on Port Capital, accounting separately for Return on Port Capital up to the Interest Cost Limitation and Excess Return; (iii) if applicable, adjustments to the prior Port Quarterly Report; (iv) application of Project Payment Sources that Port has received during the reporting period, accounting separately for each source; and (v) Port Costs and Other City Costs, billed, paid, and unpaid.

(b) Budget Preparation.

(i) Within 90 days after the Reference Date: (1) the Port will deliver to Developer an estimate of Port Costs and Other City Costs projected to be incurred through the end of City Fiscal Year 2018-2019; and (2) the Port and

Developer will meet and confer to create a Port FY Budget of projected Port Costs, Other City Costs, and Public Financing Sources for the period ending June 30 of the 2018-2019 City Fiscal Year. By October 1 of each year during the DDA Term, the Port and Developer will meet and confer on an Annual Port Budget and a Port FY Budget for the next City Fiscal Year.

(ii) To aid the Port in preparing its Port FY Budget, Developer will provide its estimates of Horizontal Development Costs for the next City Fiscal Year by quarter. By March 1 of each City Fiscal Year, the Port will advise Developer of Advances of Port Capital that the Port intends to include in its proposed Port FY Budget as a Project Payment Source, subject to the City's annual budget approval process.

(iii) In each Port FY Budget, the Port will budget the Allocated Project Tax Increment necessary to: (1) offset the Potential Facilities Special Tax Levy of each Current Parcel under **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service) and **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service); (2) pay debt service and other costs associated with any Mello-Roos Bonds or Tax Increment Bonds for which Allocated Project Tax Increment was pledged; (3) provide funds to pay Capital Costs for which Project Tax Increment will be a source; and (4) otherwise satisfy the Project Payment Obligation.

(c) Contents of Annual Budgets. The Port's preliminary budgets will provide quarterly estimates of projected Public Financing Sources, Port Costs, and Other City Costs for allocated Port and City staff by department and category and include estimated fees payable to third-party professionals that the Port and other City Agencies have engaged or expect to engage. The Port will update its preliminary budget through an iterative process and discussions with Developer as the Port obtains more information. Through this process, the Port and Developer will agree on the Annual Port Budget and agree on the amount that the Port will retain from Public Financing Sources to offset Port Costs and Other City Costs and an estimate of the remaining amount that Developer will be required to pay.

(d) City and State Authority. Developer acknowledges that the Port's departmental budget and budget supplements are subject to review and approval by the Port Commission and the Board of Supervisors, each in its sole discretion. Developer also acknowledges that the Port's budget, including the Annual Port Budget, is subject to applicable requirements of AB 418, the public trust, and the Charter.

(e) Reporting.

(i) Within 90 days after the end of each quarter during the DDA Term, the Port Director will deliver to Developer a Port Quarterly Report that states the Port's Horizontal Development Costs for Port Improvements, Port Costs, Other City Costs, and Project Payment Sources for the previous quarter and in comparison to the Annual Port Budget and the Port FY Budget. The Port Director or the Port Finance Director must certify that each Port Quarterly Report is complete and complies with this Section to her knowledge. Each Port Quarterly Report will be binding on Developer in the absence of error that Developer demonstrates in six months after receipt.

(ii) The report must be in a reasonably detailed form and include copies of invoices from any third-party professionals. The Port must provide

additional information and supporting documentation about Port Costs at Developer's reasonable request. The Port and Developer agree to cooperate to develop a reporting format that satisfies Developer's reasonable informational needs without divulging any privileged or confidential information of the Port, the City, or their respective Agents.

(iii) Within six months after the Project Payment Obligation is satisfied, the Port will prepare a Final Port Report providing cumulative, detailed information about the Port's Horizontal Development Costs and Return on Port Capital spent for Port Improvements. The Final Port Report will be subject to Developer's rights under **Subsection 9.4(b)** (Developer Audit).

9.3. Audit Obligations.

(a) Phase Audit.

(i) In reference to each Phase, except as to any portion for which the DDA has been terminated or unless otherwise approved by the Port Director, Developer must submit to the Port a Phase Audit prepared by a CPA that updates all financial matters included in previously submitted Developer Quarterly Reports through the Phase Audit Date. The CPA must prepare the report according to a scope of review agreed upon by the Port and the Developer. The cost of a Phase Audit will be a Soft Cost recorded on the Developer Capital Schedule.

(ii) Subject to **clause (iii)** of this Subsection, the Phase Audit Date for each Phase will be six months after the later of the date that the Port has: (1) conveyed the last Option Parcel to be conveyed in the Phase; or (2) issued the Certificate of Completion.

(iii) The Phase Audit Date for any Terminated Phase will be six months after the Termination Date.

(iv) The Port will have two months to review and accept each Phase Audit without prejudice to its rights under **Subsection 9.4(a)** (Port Audit).

(b) Final Audit.

(i) The Final Audit Date for the Horizontal Improvements will be six months after the Port has satisfied the Project Payment Obligation for the Developer Balance and all Development Parcels have been conveyed to Vertical Developers. Developer must submit to the Port the Final Audit prepared by a CPA, except as to any terminated Phase, which updates all of the matters included in all Phase Audits through the Final Audit Date. The CPA will prepare the report according to a scope of review approved by the Port.

(ii) The Final Audit will provide the basis for determining: (1) whether a Project Surplus exists; and (2) the final distribution of Land Proceeds under **Section 3.10** (Distribution of Project Surplus).

(iii) The Port will have two months to review and accept the Final Audit without prejudice to its rights under **Subsection 9.4(a)** (Port Audit).

9.4. Audit Rights

(a) Port Audit. The Port will have the right to conduct a Port Audit of Books and Records pertaining to a Phase Audit and of the Final Audit. Such audit will be conducted during normal business hours upon no less than 10 business days' notice at the principal place of business of Developer in San Francisco or other places where Books and Records are kept. Port will provide Developer with copies of any audit performed. The Port must notify Developer of the Port's intent to conduct a Port Audit no more than two years after receiving the Phase Audit or Final Audit that the Port intends to review.

(i) Port Costs. The Port will bear its own audit costs unless a Port Audit reveals that Developer's Capital Costs for any category are overstated by 5% or more from those stated in the Phase Audit or Final Audit under review. In that case, the costs of the Port Audit will be reimbursable Port Costs under the DDA.

(ii) Dispute Resolution. The Parties may agree to submit disputes over whether any of Developer's Capital Costs for any category are overstated by 5% or more to nonbinding arbitration under *DDA § 10.3* (General Arbitration Procedures).

(b) Developer Audit. Developer will have the right to conduct a Developer Audit of the Port's Horizontal Development Costs as reported in the Final Port Report. Such audit will be conducted during normal business hours upon no less than 10 business days' notice at the Port's administrative offices in San Francisco. Developer will provide Port with copies of any audit performed. Developer must notify the Port of Developer's intent to conduct a Developer Audit no more than two years after receiving the Final Port Report.

(i) Developer Costs. Developer will bear its own audit costs unless a Developer Audit reveals that the Port's Horizontal Development Costs for any category are overstated by 5% or more from those stated in the Final Port Report. In that case, the costs of the Developer Audit will be will be a Soft Cost recorded on the Developer Capital Schedule.

(ii) Dispute Resolution. The Parties may agree to submit disputes over whether any of the Port's Horizontal Development Costs for any category are overstated by 5% or more to nonbinding arbitration under *DDA Section 10.3* (General Arbitration Procedures).

9.5. Books and Records.

(a) Books and Records. Developer must keep in its San Francisco office Books and Records of all: (i) Developer Capital spent on Horizontal Development Costs; (ii) application of Project Payment Sources and any other sources to pay Developer's Capital Costs, organized by Phase; and (iii) Phase Accounts, Developer Quarterly Reports, Phase Audits, and the Final Audit, under generally accepted accounting principles consistently applied, or in another format approved by the Port. Developer must maintain Books and Records for each Phase for the longer of two years after the applicable date that the Port accepts a Phase Audit under **Subsection 9.3(a)** (Phase Audit) and the date on which any Port Audit is final or any litigation or dispute resolution proceeding relating to Developer's Books and Records or any Port Audit is finally concluded. After reasonable notice, Developer will make its Books and Records available to the Port during regular business hours.

(b) Port Books and Records. The Port agrees to provide copies of its annual Statement of Indebtedness and financial statements (audited, if available) relating to each of the Sub-Project Area's Appendices to Developer as soon as practicable following their public filing or release, until the Final Audit Date. The Port must retain and make its Books and Records related to Promissory Note-LP and Promissory Note-X available for Developer's review and audit until the Final Audit Date.

9.6. Consultants.

(a) Port Consultants. The Port, following consultation with Developer, will select any consultants that the Port deems reasonably necessary to form the CFDs and the Sub-Project Areas, prepare Appendix G-2 and the RMAs, issue Bonds, and otherwise implement the DDA. The Port currently anticipates engaging special tax consultants, tax increment fiscal consultants, appraisers, financial advisors, bond underwriters, absorption consultants, Bond Counsel, bond trustees, escrow agents, and escrow verification agents, without prejudice to its right to engage other consultants as the need arises. Under **Subsection 4.5(b)** (Priority Administrative Costs) and **Subsection 6.3(c)** (IFD Administrative Costs), the Port's reasonable out-of-pocket costs for financing consultants will be reimbursed from the proceeds of Public Financing Sources to the extent permitted under Governing Law and Policy. Any unreimbursed consultant costs will be Port Costs. But the Port will not be entitled to payment of any third-party costs or Other City Costs: (A) that are billed to the Port more than 12 months after the services were provided; and (B) any invoice for third-party costs or Other City Costs that the Port timely receives, if the Port does not forward it to Developer within four months after the Port receives it.

(b) Developer Consultants. Developer may engage its own consultants to advise it on matters related to the DDA, the Financing Plan, the implementation of any Public Financing Sources, or the issuance of any Bonds, and its reasonable out-of-pocket costs that are not reimbursed from Public Financing Sources will be will be Soft Costs recorded on the Developer Capital Schedule.

10. ARTS BUILDING

10.1. Arts Program.

(a) Purpose. Developer's agreement to provide affordable arts space on Parcel E-4 is an Associated Public Benefit.

10.2. Arts Building Funding.

(a) Port Subsidy. The Port will subsidize the Arts Building by providing a no-cost lease to the Arts Master Tenant.

(b) Use of Arts Building Proceeds.

(i) Based on reasonably expected interest rates, the Arts Building Special Taxes have been established to be sufficient to generate approximately $20 million in Arts Building Proceeds.

(ii) Regardless of the actual amount of Arts Building Proceeds, the funds will be used to finance the following improvements in the following order of priority and in the following amounts. In no case may Developer use Arts

Building Proceeds to finance Noonan Replacement Space in a location other than Parcel E4.

(1) If the Noonan Replacement Space is not located within the Arts Building but is located in a Stand-Alone Noonan Building under Parcel E4 Option 2 or Parcel E4 Option 3 (as described in *DDA § 7.12(b) (Development Options))* or, subject to prior authorization by the Port Commission and the Board of Supervisors and the agreement of Developer and the Port, each in its sole discretion, is located in Building 11 after it has been relocated outside the 28-Acre Site (as described in *DDA § 7.23(b) (Potential Relocation of Building 11)*):

(A) the first $13.5 million of the Arts Building Proceeds will be available to finance the hard and soft costs of the Noonan Replacement Space;

(B) if a Vertical Developer constructing a separate Arts Building on the remainder of Parcel E4 demonstrates that it has raised $17.5 million in private or philanthropic capital, the next $4 million of the Arts Building Proceeds will be available to finance the hard and soft costs of the Arts Building;

(C) subject to satisfying the CF Conditions, the next $2.5 million of the Arts Building Proceeds will be available to finance community facilities; and

(D) any remaining Arts Building Proceeds will be available to match private or philanthropic capital raised by the Vertical Developer to finance additional hard and soft costs of the Arts Building.

(2) If the Noonan Replacement Space is incorporated into a larger Arts Building under Parcel E4 Option 1 (as described in *DDA § 7.12(b)(i) (Development Options))*:

(A) if the Vertical Developer constructing the Arts Building demonstrates that it has raised $17.5 million in private or philanthropic capital, up to $17.5 million of the Arts Building Proceeds will be available to finance the hard and soft costs of the Arts Building;

(B) subject to satisfying the CF Conditions, the next $2.5 million of the Arts Building Proceeds will be available to finance community facilities; and

(C) Arts Building Proceeds will be available to match private or philanthropic capital raised by the Vertical Developer to finance additional hard and soft costs of the Arts Building.

(3) The use of Arts Building Proceeds to implement the Building 11 Relocation Plan is a permitted use in accordance with *DDA § 7.23 (Potential Relocation of Building 11)*.

(4) Subject to the foregoing, the Port may use any remaining Arts Building Proceeds to finance a public building on Parcel E4.

11. HISTORIC BUILDINGS

11.1. Subsidy for Historic Buildings 12 and 21. The Parties agreed to this Section after concluding that payment of the Historic Building Feasibility Gap would meet the requirements for use of Allocated Tax Increment under the IFD Law and, assuming that the City's Special Tax Financing Law is amended as the Port has requested, Special Taxes under the CFD Law. The Historic Building Feasibility Gap will be determined and financed separately for each of Historic Building 12 and Historic Building 21. References in this Article to Historic Buildings exclude Historic Building 2, and references to a Current Parcel mean either Historic Building if ad valorem taxes are current.

(a) Financing for Historic Building Feasibility Gap.

(i) The Pier 70 Leased Property CFD will not issue Mello-Roos Bonds secured by the Facilities Special Taxes in Zone 3 of the Pier 70 Leased Property CFD except to finance the Historic Building Feasibility Gap for each Historic Building.

(ii) The Parties have agreed to establish the levy of Facilities Special Taxes on each Historic Building at rates that are based on the sum of projected Project Tax Increment and Port Tax Increment that each Historic Building will generate, using the same buffer applied to all other Taxable Parcels in the Pier 70 Leased Property CFD.

(iii) Prior to construction of a Historic Building, the Parties will estimate its Historic Building Feasibility Gap and, if allowed by the RMA, determine if the Facilities Special Tax rates applicable to the Historic Building should be reduced to reflect the estimated gap. In determining the amount of the reduction, the Parties will assume that the Project Tax Increment from the Historic Building will be applied first before any Port Tax Increment from the Historic Building. The Parties will use the same buffer as the buffer applied when setting the Facilities Special Tax rates initially.

(b) Application of HB Tax Increment to Special Debt Service. This Subsection describes how HB Tax Increment will be credited to Assessed Parcels in Zone 3 of the Pier 70 Leased Property CFD to offset the levy of Facilities Special Taxes needed for debt service on the applicable issue of HB Bonds issued on behalf of the CFD for financing the Historic Building Funding Gap. This Subsection will be calculated for, and applied separately to, each Historic Building, and the Parties acknowledge that the amount of Project Tax Increment and Port Tax Increment used to pay the Special Debt Service on the applicable issue of HB Bonds issued to finance the Historic Building Funding Gap may differ between Historic Building 12 and Historic Building 21.

(i) *Step 1*. By May 30 in each City Fiscal Year, the Treasurer-Tax Collector will prepare a Payment Report that specifies the HB Tax Increment for each Taxable Parcel of a Historic Building.

(ii) *Step 2*. At the beginning of the next City Fiscal Year, the CFD Administrator will:

(1) advise the Treasurer-Tax Collector of the Potential Facilities Special Tax Levy on each Taxable Parcel of the Historic Building; and

(2) deliver to the Treasurer-Tax Collector and the Controller an Assessed Parcel Credit Report that specifies the amount of the Facilities Special Tax Credit available to offset the Potential Facilities Special Tax Levy for each Current Parcel of the Historic Building.

(iii) *Step 3*: The following will apply to the current City Fiscal Year:

(1) Based on the Assessed Parcel Credit Report, the Controller will direct the disbursement of the HB Tax Increment to the applicable Mello-Roos Bond debt service account designated by the CFD Administrator in the following order of priority: (i) the Project Tax Increment from the Historic Building; and (ii) if needed, the Port Tax Increment from the Historic Building.

(2) The CFD Administrator will apply the specific Parcel Increment Amount to each Current Parcel of the Historic Building that generated it.

(3) The CFD Administrator will levy Facilities Special Taxes in the City Fiscal Year on each Current Parcel of the Historic Building in the amount equal to the Current Parcel's Potential Facilities Special Tax Levy after applying the amounts under **paragraph (2)** above.

(4) The CFD Administrator will levy the Potential Facilities Special Tax Levy on every Taxable Parcel of the Historic Building other than the Current Parcels according to the RMA.

11.2. Determining Whether Feasibility Gap Exists. The Historic Building Feasibility Gap for each Historic Building will be calculated separately in two steps as follows.

(a) Preliminary Determination and Financing.

(i) As soon as practicable after a Vertical Developer Affiliate obtains a building permit for either Historic Building, it will submit a detailed proforma with revised Historic Building Costs and projected revenues, along with a projected Historic Building Feasibility Gap.

(ii) Within 30 days after the submittal, the Port and the Vertical Developer Affiliate will meet to review the Facilities Special Tax rate established by the RMA for the Pier 70 Leased Property CFD for the Historic Building and the projected amount of Project Tax Increment and Port Tax Increment that will be generated by the Historic Building.

(iii) After this meeting, the Port will use commercially reasonable efforts to issue a Mello-Roos Bond secured by Facilities Special Taxes levied on the Historic Building to fund its projected Historic Building Feasibility Gap. If issuing a Mello-Roos Bond for this purpose is not commercially reasonable or insufficient, the Parties will consider other financing options, including issuing Tax Increment Bonds secured by Tax Increment generated by the Historic Building.

(iv) The Port will use the proceeds of Mello-Roos Bonds issued under **clause (iii)** of this Subsection pay the amount of the projected Historic Building Feasibility Gap to the applicable Vertical Developer Affiliate for use in construction.

(v) As a condition to applying Public Financing Sources to the Historic Building Feasibility Gap, the Port will have the right to approve construction drawings for the Historic Building. The applicable Vertical Developer Affiliate will maintain a Historic Building Schedule in a format approved by the Port to account for eligible costs and application of Public Financing Sources to the applicable Historic Building Feasibility Gap in accordance with the CFD Law.

(b) Final Determination. At the earlier of one year after receipt of a TCO or 90% occupancy of space in the applicable Historic Building, the Historic Building Feasibility Gap will be finally determined using the formula in this Subsection based on actual revenues, Historic Building Cost, and Historic Tax Credits received.

(i) The Vertical Developer Affiliate will provide documentation for the Historic Building Cost of the Historic Building in form and substance reasonably satisfactory to the Port.

(ii) The Port will determine the capitalized value of the actual net operating income of the Historic Building, defined as gross income less real estate taxes, insurance and other operating expenses as documented by the Vertical Developer Affiliate and reasonably approved by the Port, assuming a 7% capitalization rate, accounting for the net present value of guaranteed participation rent to the Port of 3.5% of modified gross revenues starting on the 31st anniversary of the issuance of a Temporary Certificate of Occupancy for the applicable Historic Building.

(iii) The final Historic Building Feasibility Gap will be the Historic Building Cost less: (1) the capitalized value determined in **clause (ii)**; (2) actual contributions made by Historic Tax Credit investors; and (3) Bond Proceeds received by the Vertical Developer Affiliate for the applicable Historic Building.

(c) True Up.

(i) If the final Historic Building Feasibility Gap is less than $0, the Vertical Developer Affiliate will repay the deficit to the Port as Additional Rent under the Parcel Lease for that Historic Building. The Port will deposit the Additional Rent into the Pier 70 Leased Property CFD Capital Account for use as a Project Payment Source under this Financing Plan.

(ii) If the final Historic Building Feasibility Gap is greater than $0, then the Port will use the next available Public Financing Sources in accordance with **Subsection 2.4(f)** (Priorities for Payment) to apply to the shortfall until the final Historic Building Feasibility Gap is fully paid.

12. HOUSING TAX INCREMENT

12.1. IRFD Formation. The Port is requesting that the Board of Supervisors take the following actions in the IRFD Formation Proceedings.

(a) Agreement to Allocate Housing Tax Increment. The City will agree to allocate to the IRFD the Allocated Housing Tax Increment as set forth in MOHCD's annual budget for use in the 28-Acre Site in accordance with the IRFD Financing Plan and this Financing Plan.

(b) Appointment of Port as Agent. The City will appoint the Port as the IRFD Agent with the authority to act on behalf of the IRFD to implement this Financing Plan, including:

(i) disbursing Allocated Housing Tax Increment as provided in the IRFD Financing Plan;

(ii) determining in collaboration with the Public Finance Division of the Controller's Office whether and in what amounts the IRFD will issue Housing Tax Increment Bonds;

(iii) directing the Indenture Trustees' disbursement of Bond Proceeds; and

(iv) preparing on behalf of the IRFD an annual report for posting on the Board of Supervisors' webpage in compliance with section 53369.26 of the IRFD Law.

12.2. Tax Allocation MOU. The Board of Supervisors will authorize the Controller and the Treasurer-Tax Collector to enter into the Tax Allocation MOU with the Port under Charter section B7.320 in furtherance of the Financing Documents with respect to the IRFD.

(a) Authorized Actions. The Board of Supervisors will authorize and direct the following actions by approving the Tax Allocation MOU.

(i) The Treasurer-Tax Collector will levy and collect in a segregated fund Allocated Housing Tax Increment from the IRFD as directed by the Port as IRFD Agent to the extent consistent with the Financing Documents.

(ii) The Controller will disburse Allocated Housing Tax Increment that the City has allocated from the IRFD for affordable housing in the 28-Acre Site as directed by the Port as IRFD Agent to the extent consistent with the IRFD Financing Plan, the other Financing Documents, and the Port's approved budget.

(b) Required Cooperation and Consultation. The Port will consult with the Public Finance Division of the Controller's Office on timing, amounts, and other matters relating to Bonds. The Port, the Treasurer-Tax Collector and the Controller will cooperate to ensure that the objectives of the Financing Documents will be fulfilled.

12.3. Housing Tax Increment Bonds. The IRFD Financing Plan authorizes the IRFD to issue Bonds secured and payable by Hoedown Yard Facilities Special Taxes, Housing Tax Increment, or both in compliance with Governing Law and Policy.

12.4. Validation. Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the IRFD and matters authorized under the IRFD Financing Plan and this Financing Plan. Attorneys' fees associated with these validation actions will be Port Costs or City Costs that are reimbursable under **Section 9.2** (Port Accounting and Budget).

Developer and the Port have executed this Financing Plan as of the last date written below.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

By: ______________________

Name: ______________________

Title: ______________________

Date: ______________________

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Port Commission

By: ______________________
Elaine Forbes,
Executive Director

Date: ______________________

Authorized by Port Resolution No. 17-43 and Board of Supervisors Resolution No. 401-17.

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: ______________________
Joanne Sakai
Deputy City Attorney

FINANCING PLAN EXHIBIT A

CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR

ACQUISITION AND REIMBURSEMENT AGREEMENT

BY AND BETWEEN

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

AND

FC PIER 70, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

[REFERENCE DATE]

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APPENDIX

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ACQUISITION AND REIMBURSEMENT AGREEMENT

This **ACQUISITION AND REIMBURSEMENT AGREEMENT** (this "**Acquisition Agreement**"), dated for reference purposes only as of the Reference Date, is between the **CITY AND COUNTY OF SAN FRANCISCO** (the "**City**"), acting by and through the **PORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO** (the "**Port**"), and **FC PIER 70, LLC**, a Delaware limited liability company ("**Developer**"). Developer and the Port are each a "**Party**" to this Acquisition Agreement.

Standard provisions and rules of interpretation in Part A of the Appendix to Transaction Documents for the Pier 70 Mixed-Use Project (the "**Appendix**") apply to this Acquisition Agreement. Terms used but not defined in this Acquisition Agreement are defined in Part B of the Appendix.

RECITALS

A. The Port and Developer have entered into the DDA, which includes the Financing Plan.

1. The DDA obligates Developer to construct Horizontal Improvements at the 28-Acre Site. **AA Exhibit A** (Horizontal Improvements) lists the Horizontal Improvements for the Project. The Port will meet its Project Payment Obligation under the Financing Plan, in part, by reimbursing Developer for the Capital Costs of Horizontal Improvements that are approved by this Acquisition Agreement. The Port will direct the disbursement of payments to Developer on behalf of the Acquiring Parties to acquire the Horizontal Improvements from Developer.

B. The Port and the City have entered into the Tax Allocation MOU under which the City agrees to take actions necessary to make the Public Financing Sources available for the Acquisition Prices of Horizontal Improvements as described in the Financing Plan. In addition to the Public Financing Sources, the Port will satisfy the Project Payment Obligation with: (1) Advances of Land Proceeds; (2) at its election, Port Capital Advances; and (3) other sources described in *FP § 1.6 (Other Sources and Costs)*.

C. This Acquisition Agreement describes the procedures by which, at Developer's request, the Port will:

1. inspect on its own behalf, or cause authorized representatives of Other Acquiring Agencies to inspect, the Horizontal Improvements listed in **AA Exhibit A** (Horizontal Improvements), as amended from time to time;

2. review and amend the Phasing and Components of the Horizontal Improvements, as set forth in **AA Exhibit B** (Cost Estimates of Components by Phase); and

3. authorize the payment to the Developer of the Acquisition Price of Horizontal Improvements as Project Payment Sources become available to the Port in accordance with the Financing Plan.

AGREEMENT

1. PURPOSE AND INTENT.

1.1. Implementation.

(a) Purpose. This Acquisition Agreement: (i) implements and is subject to all limitations of the DDA and the Financing Plan; (ii) will become effective on the date this Acquisition Agreement is fully executed and delivered; and (iii) describes the procedures by which the Horizontal Improvements are authorized for payment under the Financing Plan. The

estimated Horizontal Development Costs of the Horizontal Improvements by Component and Phase are set forth in **AA Exhibit B** (Cost Estimates of Components by Phase). The Payment Request will set forth only the actual Horizontal Development Costs of the Horizontal Improvement or Component, and will not set forth the Developer Return on such costs. However, the term "**Acquisition Price**" for a Horizontal Improvement or Component shall include both (i) the actual Horizontal Development Costs of the Horizontal Improvement set forth in the Payment Request completed pursuant to this Acquisition Agreement and (ii) Developer Return on such actual Horizontal Development Costs of the Horizontal Improvement, payable from Project Payment Sources under the Financing Plan.

(b) Relationship to Other Documents. Procedures in this Acquisition Agreement are intended to complement and implement procedures in *DDA art. 3 (Phase Approval), DDA art. 13 (Improvement Plans), DDA art. 15 (Horizontal Development), ICA art. 4 (Review Procedures for Streetscape Master Plan; Improvement Plans; Inspections; and Acceptance)*, and the Financing Plan. Procedures in this Acquisition Agreement will never override requirements or conflicting provisions in any other Transaction Document.

1.2. Horizontal Improvements List.

(a) Construction Phasing. The Parties intend **AA Exhibit A** (Horizontal Improvements) to be a complete list of all Horizontal Improvements for which Developer could incur Horizontal Development Costs.

(b) Exclusive List. Under this Acquisition Agreement, Developer may submit revisions to **AA Exhibit A** (Horizontal Improvements) from time to time to reflect proposed changes in the scope of Horizontal Improvements for the Project. The Port will consider Developer's proposal under *DDA § 3.2(i) (Amendments to Phase Approvals)*. Unless the changes are Material Modifications, the proposed changes will not require approval by the Board of Supervisors. The Port will not be required to use any Project Payment Source to pay the Acquisition Price of any Horizontal Improvement that is not listed in **AA Exhibit A** (Horizontal Improvements), as revised and approved. **AA Exhibit A** (Horizontal Improvements) does not limit the financing of other costs under the DDA and the Financing Plan.

1.3. Horizontal Development Costs of Horizontal Improvements.

(a) Horizontal Development Cost Estimates. **AA Exhibit B** (Cost Estimates of Components by Phase) lists preliminary estimates of the Horizontal Development Costs of the Horizontal Improvements by Components and Phase. Notwithstanding any estimates set forth on **AA Exhibit B** (Cost Estimates of Components by Phase), the estimated Horizontal Development Costs of Horizontal Improvements on **AA Exhibit B** (Cost Estimates of Components by Phase) are for informational purposes only and shall not determine the actual Acquisition Price, which shall be the actual Horizontal Development Costs of the Horizontal Improvements or Components plus Developer Return.

(b) Exclusive List. The Parties intend **AA Exhibit B** (Cost Estimates of Components by Phase) to be a list of all Components of the Horizontal Improvements and the estimated Horizontal Development Costs thereof. **AA Exhibit B** (Cost Estimates of Components by Phase) will not be complete at execution of this Acquisition Agreement, but Developer will provide a description of Components and Acquisition Cost Updates through information provided under *DDA § 3.2(h) (Periodic Updates of Phase Budget)* and *DDA § 14.4(b) (Change Orders)*. Each Acquisition Cost Update will supersede the prior version.

1.4. Project Payment Sources.

(a) Limitations. The Port will not be obligated to pay Developer any amounts due under the Financing Plan except from Project Payment Sources. The Port and Developer acknowledge that:

(i) Public Financing Sources may be applied to the Acquisition Price of a

Horizontal Improvement approved on a Payment Request only to the extent that the Acquisition Price is eligible for payment under Governing Law and Policy, including the Interest Cost Limitation, even if the costs were included in **AA Exhibit A** (Horizontal Improvements) or **AA Exhibit B** (Cost Estimates of Components by Phase) and Acquisition Cost Updates;

(ii) limitations on the use of Public Financing Sources for the payment of the Acquisition Price of a Horizontal Improvement or Component do not limit the Port's application of other Project Payment Sources for the payment of the Acquisition Price of a Horizontal Improvement or Component; and

(iii) Developer will make commercially reasonable efforts to provide the Port timely with updated information on Horizontal Development Costs of Horizontal Improvements so that the Port is able to budget for the availability of Project Payment Sources to pay the Acquisition Prices of Horizontal Improvements and Components in **AA Exhibit B** (Cost Estimates of Components by Phase) and Acquisition Cost Updates.

(b) Escrow Bonds. Developer acknowledges that if the Port and Developer agree to issue escrow bonds for the Project, and bond proceeds are deposited in an escrow fund, escrowed amounts will become Project Payment Sources: (i) only after satisfaction of all escrow requirements and release from the escrow fund; and (ii) in the amounts specified in the applicable Indenture. The Port agrees to take all reasonable actions necessary to cause the release of funds from an escrow fund after all conditions for their release have been satisfied.

(c) No Payment Guarantee. The Port makes no warranty, express or implied, that Project Payment Sources will be sufficient to pay the Acquisition Price of the Horizontal Improvements.

1.5. Deposits of Project Payment Sources.

(a) Bond Proceeds. The proceeds of any Mello-Roos Bonds and Tax Allocation Bonds will be deposited, held, invested, reinvested, and disbursed as provided in the respective Indenture, all in a manner consistent with the Financing Plan. The portion of Bond proceeds that is used to fund reserves for debt service, to capitalize interest on the Bonds, and to pay costs of issuance and administration will not be available to make payments to Developer.

(b) Tax Revenues. Mello-Roos Taxes and Project Tax Increment will be deposited in the Special Fund Trust Account (including the Revenue Account of the Land Proceeds Fund) subject to a Special Fund Administration Agreement and held and disbursed as specified in the Financing Plan.

(c) Land Proceeds. Land Proceeds will be deposited into Escrow Accounts established in accordance with the Vertical DDAs between the Port and Vertical Developers or the Land Proceeds Account (including the Revenue Account) and disbursed in accordance with escrow instructions at the Close of Escrow for each Port conveyance or as otherwise specified in the Financing Plan.

(d) Investment Policy. Developer acknowledges that Port, in its proprietary capacity and as CFD Agent and IFD Agent, will direct the investment of Project Payment Sources in accordance with the Port's and the City's investment policies, all Applicable Laws, and any applicable Indentures. The Port will have no responsibility to Developer with respect to any investment of Project Payment Sources before their use under this Acquisition Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment so long as the investments were made in accordance with all Applicable Laws and any applicable Indenture, even if a loss diminishes the amount of available Project Payment Sources.

2. CONSTRUCTION OF HORIZONTAL IMPROVEMENTS.

2.1. Obligation to Construct. The obligation to construct the Horizontal Improvements is governed solely by the DDA. This Acquisition Agreement does not obligate Developer to construct or pay for any Horizontal Improvement.

2.2. Relationship to Public Works Contracting. This Acquisition Agreement provides for the Port's acquisition of Horizontal Improvements from time to time from Project Payment Sources and is not intended to be a public works contract. In that regard, the Port and Developer agree to all of the following statements.

(a) Local Concern. Developer's construction of Horizontal Improvements and Components is of local, not statewide, concern.

(b) Private Work. Neither the California Public Contract Code nor the City's public works requirements apply to Developer's construction of the Horizontal Improvements.

(c) Private Contracts. Developer will award all contracts for the construction of the Horizontal Improvements.

(d) No Advantage. Requiring Developer to comply with the Public Contract Code and the City's public works requirements would be incongruous and would not produce an advantage to the City, the Port, or the Project.

(e) Compliance with DDA. Developer agrees that *DDA § 14.5 (Contracting Procedures)* will apply to all contracts for construction of the Horizontal Improvements, including Deferred Infrastructure under *DDA § 15.6 (Deferred Infrastructure).*

(f) Consultation with Port. Developer agrees to conduct construction progress meetings in accordance with *DDA § 14.6 (Progress Meetings).*

(g) Third-Party Work. Construction of the Horizontal Improvements may be performed by Developer, by contractors employed by Developer, or by a third-party (including a Vertical Developer or contractor) that constructs the Horizontal Improvements on behalf of Developer.

2.3. Independent Contractor.

(a) No Obligation to Contractors. In performing under the DDA, Developer is an independent contractor and not the agent or employee of the Port, the City, the CFD, or the IFD. Except as otherwise provided in this Acquisition Agreement, none of the Port, the City, the CFD, or the IFD has any obligation to make payments to any contractor, subcontractor, agent, consultant, employee, or supplier of Developer.

(b) Port Determination. The Port has determined that it would obtain no advantage by directly undertaking the construction of the Horizontal Improvements, and that the DDA requires that the Horizontal Improvements be constructed by Developer as if they had been constructed under the direction and supervision, or under the authority, of the applicable Acquiring Party.

3. ACQUISITION OF HORIZONTAL IMPROVEMENTS.

3.1. Purchase and Sale. Developer agrees to sell Horizontal Improvements at their Acquisition Prices to the Acquiring Parties, and the Port agrees to use Project Payment Sources to pay Developer the Acquisition Prices of Horizontal Improvements, as Project Payment Sources become available as described in the Financing Plan.

3.2. Component Financing.

(a) Horizontal Improvements Valued at $1 Million or Less. Section 53313.51(a) of the CFD Law and section 53395.8(g)(12)(A) of the IFD Law authorize the use of Public Financing Sources to purchase a Component of a Horizontal Improvement with estimated Horizontal Development Costs of $1 million or less so long as the Component is capable of

serviceable use. Subject to the availability of Project Payment Sources, the Port agrees to pay to Developer the Acquisition Price of any such Component capable of serviceable use under this Section before Developer has:

(i) completed the Horizontal Improvement of which the Component is a part, unless it is the final Component of the Horizontal Improvement; or

(ii) transferred title to the Horizontal Improvement to the Acquiring Party.

(b) Horizontal Improvements Valued Over $1 Million. If the estimated Horizontal Development Costs of a Horizontal Improvement is over $1 million (**"Qualifying Facility"**), section 53313.51(b) of the CFD Law and section 53395.8(g)(12)(B) of the IFD Law authorize the purchase of Components of that Qualifying Facility *whether or not* such Components are capable of serviceable use. Subject to the availability of Project Payment Sources, the Port agrees to pay to Developer the Acquisition Price of Components of Qualifying Facilities before Developer has:

(i) completed the Qualifying Facility of which the Component is a part, unless it is the final Component of a Qualifying Facility; or

(ii) transferred title to the Qualifying Facility to the Acquiring Party.

(c) Progress Payments. As authorized by the CFD Law and the IFD Law, the Port may make progress payments for Horizontal Improvements. **AA Exhibit B** (Cost Estimates of Components by Phase) will specify the Components that qualify under **Subsection 3.2(a)** (Horizontal Improvements Valued at $1 Million or Less) or **Subsection 3.2(b)** (Horizontal Improvements Valued Over $1 Million). The Port will pay for either:

(i) Components that are segments of a Horizontal Improvement (e.g., a segment of a water line); or

(ii) incremental completion of a Component (i.e., progress payments) (e.g., percent completion of earthwork).

(d) Payment of Soft Costs. Soft Costs may be paid as part of the Acquisition Price of any Component. In addition, Soft Costs for more than one Horizontal Improvement may be submitted for approval as they occur in advance of construction of such Horizontal Improvements provided that the Soft Costs apply to Horizontal Improvements listed in **AA Exhibit A** (Horizontal Improvements).

(e) Acceptance Not A Condition. A Component does not have to be accepted by the Acquiring Party as a condition precedent to the payment of its Acquisition Price.

3.3. Defective or Nonconforming Work. This Section will apply if an Acquiring Party finds any of the work done or materials furnished for a Horizontal Improvement or Component to be defective or nonconforming to approved Improvement Plans and Applicable Laws. If the finding is made before the Port has paid the entire Acquisition Price for the Horizontal Improvement to Developer, the Port may withhold the payment until the defect or nonconformity is corrected to the Acquiring Party's satisfaction. If the finding is made after the Port has paid the Acquisition Price to Developer, then the DDA will govern the Port's rights and remedies.

4. PAYMENT REQUESTS.

4.1. Initiating Payment.

(a) Delivery to Chief Harbor Engineer. To initiate the process for authorizing payment, Developer must deliver to the Chief Harbor Engineer a Payment Request in the form of **AA Exhibit C** (Form of Payment Request) that contains all relevant information in an organized manner.

(b) Completeness Determination. The Chief Harbor Engineer will have 10 days after

Developer delivers a Payment Request to review it for completeness. During the 10-day period, the Chief Harbor Engineer will have the right to request additional information and documentation reasonably necessary to complete the review, and will have an additional 10 days after Developer delivers the requested information or documentation to make a completeness determination.

(c) Required Attachments. Required attachments to each Payment Request include:

(i) an inspection report signed by the authorized representative of each applicable Acquiring Agency validating that the Horizontal Improvement or Component for which payment is requested complies with Project Requirements and Regulatory Requirements;

(ii) acceptable forms of proof of payment for the Horizontal Development Costs of the Horizontal Improvement to be reimbursed by the payment;

(iii) other documents specified in **AA Exhibit C** (Form of Payment Request) to the extent applicable;

(iv) a completed copy of **AA Exhibit C1** (Components Covered by Payment Request) specifying each contractor, subcontractor, materialman, and other person with whom Developer or its contractor has entered into contracts with respect to any Component included in the Payment Request;

(v) the contract amount for each contract; and

(vi) signed and acknowledged unconditional or conditional lien releases and waivers (in the required statutory form) from all contractors, subcontractors, materialmen, consultants, and other persons that Developer retained in connection with the Component, in each instance unconditionally or conditionally waiving all lien and stop notice rights with respect to the pending payment.

(d) Cost Allocation. The Developer's Cost Allocation Proposal in a Payment Request, if any, will be presumed to be reasonable and will be accepted for all purposes of this Acquisition Agreement and payment pursuant to the Financing Plan unless the Chief Harbor Engineer notifies the Developer of the Port's good faith reasonable objection to the Cost Allocation Proposal within five (5) days after the Developer delivers the Payment Request to the Port. If costs are allocated, each Payment Request must include Developer's Cost Allocation Proposal for the following categories of Horizontal Development Costs in the calculation of Acquisition Prices:

(i) Horizontal Development Costs that apply to more than one Horizontal Improvement or Component (e.g., Soft Costs such as design fees and Hard Costs such as Site Preparation) (provided, however, that Soft Costs may be paid in progress payments without allocating to a specific Horizontal Improvement as set forth in **Section 3.2(d)** (Payment of Soft Costs));

(ii) costs that apply to both Horizontal Improvements and Vertical Improvements (e.g., trunk utility infrastructure up to the lateral demarcation of a Development Parcel (Horizontal Development Cost) and connections from the building to the trunk infrastructure (vertical cost)); and

(iii) for Horizontal Improvements to be purchased in Components, the amount of the Acquisition Price allocated to each Component if not previously stated, or a reasonable, objective method to be used to allocate among Components.

(e) Final Payment. The final Payment Request for a Horizontal Improvement also must include:

(i) a copy of the Chief Harbor Engineer's SOP Compliance Determination for the Horizontal Improvement under *DDA § 15.7* (SOP Compliance);

(ii) Developer's signed assignment of warranties and guaranties for the Horizontal Improvement, in a form acceptable to the Acquiring Party;

(iii) as-built drawings and an executed assignment of the Construction Documents, to the extent reasonably obtainable; and

(iv) an executed assignment of reimbursements, if any, from third parties payable with respect to the Horizontal Improvements, such as utility or other reimbursements, which the Port will tender to the Special Fund Trustee for deposit into the Land Proceeds Fund, unless the Parties agree to apply the funds to the Payment Request.

4.2. Processing Payment Requests.

(a) Port Review of Payment Request.

(i) The Chief Harbor Engineer will have 30 days after the Payment Request is complete to:

(1) determine whether it meets all applicable conditions of **Section 4.1** (Initiating Payment); and

(2) provide notice of his determination to Developer under **Subsection 4.2(b)** (Notice to Developer).

(ii) During the 30-day period, the Chief Harbor Engineer will have the right to request additional information and documentation reasonably necessary to complete the review. In that case, the Chief Harbor Engineer will have an additional 15 days to provide notice of his determination after Developer delivers the requested information or documentation.

(b) Notice to Developer.

(i) If the Chief Harbor Engineer approves the Payment Request he will deliver a countersigned copy of the Payment Request to Developer simultaneously with delivery of the original under **Subsection 4.3(a)** (Port Finance Director).

(ii) If the Chief Harbor Engineer does not approve the Payment Request, he must specify in writing the reasons for his disapproval. If the Payment Request is disapproved, Developer may revise and resubmit it for approval, and the Chief Harbor Engineer will review it within the amount of time that is reasonable in light of the materiality of the reasons for the disapproval, not to exceed the greater of 10 days and the remaining number of days in the 30-day period under **Subsection 4.2(a)** (Port Review of Payment Request).

(c) Deemed Approval. If the Chief Harbor Engineer fails to notify Developer within the 30-day period under **Subsection 4.2(a)** (Port Review of Payment Request) that a Payment Request is approved or disapproved, and the failure continues after the expiration of the electronic notice period under *App ¶ 2.2(c) (No Deemed Consent Without Notice)*, the Payment Request will be deemed approved.

4.3. Processing Payments.

(a) Port Finance Director. Within five days after approving a Payment Request, the Chief Harbor Engineer must forward the original signed Approved Payment Request to the Port Finance Director. If the Chief Harbor Engineer has not forwarded the Approved Payment Request within that period, or the Payment Request is deemed approved under **Subsection 4.2(c)** (Deemed Approval), Developer will have the right to deliver directly to the

Port Finance Director a Deemed Approved Payment Request, consisting of the Payment Request, together with proof of its delivery and later electronic notice under **Subsection 4.2(c)** (Deemed Approval) to the Chief Harbor Engineer, with a copy to the Chief Harbor Engineer.

Disbursements. As Project Payment Sources become available, the Port Finance Director will apply Project Payment Sources to pay the Acquisition Prices of the Horizontal Improvements and their Components, subject to (i) any limitations under Governing Law and Policy, and (ii) any priorities established in the Financing Plan. In addition to the Horizontal Development Costs of Horizontal Improvements that are the subject of the Approved Payment Request, the Port Finance Director will authorize payment of Developer Return on such costs, as provided in the Financing Plan. The Port Finance Director will direct disbursements by written delivery instructions to the Escrow Agent, the Indenture Trustee, or the Special Fund Trustee, as applicable, with copies to Developer, the CFD Agent, and the IFD Agent if applicable for their files. The Port Finance Director will make payment to the extent of available Project Payment Sources at the times and in the manner set forth in the Financing Plan.

4.4. Priority of Payment Requests.

(a) Numbering and Priority. For identification purposes only, Developer must number each Payment Request consecutively in the order in which it is submitted to the Port. The Port Finance Director will number consecutively each Approved Payment Request, along with any Payment Requests made under the Financing Plan. Except as provided under the DDA with respect to a Major Breach, the priority of Developer's right to payment under each unsatisfied Payment Request will be in ascending numerical order assigned by the Port Finance Director.

(b) Phase-Specific. Each Payment Request must be limited to Horizontal Development Costs for Horizontal Improvements that Developer incurred in a single Phase. Developer must identify the Phase to which the Payment Request pertains.

(c) Public Financing. The Port and Developer acknowledge that Public Financing Sources may be applied to a Payment Request only to the extent that the Horizontal Development Costs for Horizontal Improvements are eligible for payment under Governing Law and Policy, including the Interest Cost Limitation.

(d) No Deadline to Pay. The Port will honor Payment Requests: (i) in any number of installments as Project Payment Sources become available; and (ii) until fully paid, subject only to limitations on the amount of Project Payment Sources available for the Project.

(e) All Undisputed Amounts Paid. Except as provided under the DDA with respect to a Major Breach, the Port agrees not to withhold payment on any undisputed portion of a Payment Request.

4.5. Vesting. Developer's right to payment under a Payment Request will vest when it is approved or deemed approved under **Section 4.2** (Processing Payment Requests). If Project Payment Sources are not available to pay the full amount of a Payment Request when approved, then the Port will direct payment to the extent Project Payment Sources are available and notify Developer of the amount of the remaining unpaid portion. Developer will have a vested right to the payment of the unsatisfied portion of the Payment Request as Project Payment Sources become available.

5. MISCELLANEOUS.

5.1. Communications and Notices.

(a) Manner of Certain Communications. The following communications may be made in any written form for which receipt may be confirmed, including facsimile, electronic mail, and certified first class mail, return receipt requested:

(i) updates to **AA Exhibit A** (Horizontal Improvements) or **AA Exhibit B**

(Cost Estimates of Components by Phase);

(ii) requests for information or clarification regarding a Payment Request; and

(iii) any Port notice regarding a Payment Request.

(b) Effective Date. Communications covered by this Subsection will be effective upon receipt, or, if delivered after 5 p.m. or on a weekend or holiday, the next business day.

(c) Additional Information. In connection with processing any request under this Acquisition Agreement (including Payment Requests), the Port agrees that any additional information request by the Port or the Chief Harbor Engineer to Developer must be submitted as soon as practicable following the submission of the original materials, but in any event prior to applicable deadlines required by this Acquisition Agreement. The Chief Harbor Engineer will use good faith efforts to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use good faith efforts to provide a through, organized, and complete response to each request. Developer is authorized to communicate directly with the Port to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues.

(d) Submittals. Developer must submit proposed Payment Requests to the Port for review and processing in writing by certified first class mail - return receipt requested, personal delivery, or receipted overnight delivery. Payment Requests must be clearly marked: "*Payment Request No. ______; Pier 70; Attn: Chief Harbor Engineer* or *Port Finance Director*." Communications covered by this Subsection will be effective on the actual date of delivery, or, if delivered after 5 p.m. or on a weekend or holiday, the next business day. Copies of communications covered by this Subsection must be delivered in the same manner as the original.

(e) Notices. All other notices must be given in the manner specified in *App ¶ A.5* to the addresses for notice provided below, or as changed in accordance with *App ¶ A.5*.

Port:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Telephone: (415) 274-0400

Att'n: Chief Harbor Engineer
Facsimile:
Email:

Or

Att'n: Deputy Director, Finance/Admin.
Facsimile:
Email:

Or:

Att'n: [Port project manager]
Facsimile:
Email:

With a copy to:	City Attorney's Office Port of San Francisco Pier 1 San Francisco, CA 94111 Att'n: General Counsel Telephone: (415) 274-0485 Facsimile: (415) 274-0494 Email: eileen.malley@sfgov.org
Developer:	FC Pier 70, LLC 949 Hope Street, Suite 200 Los Angeles, California 90015 Attention: Mr. Kevin Ratner Facsimile: (213) 488-0039 Email: kevinratner@forestcity.net
With a copy to:	Forest City Enterprises, Inc. 50 Public Square 1360 Terminal Tower Cleveland, Ohio 44113 Attention: Amanda Seewald, Esq. Facsimile: (216) 263-6206 Email: amandaseewald@forestcity.net

(f) Day-to-Day Communications. Developer and the Port agree that day-to-day communications will be directed as follows.

(i) Developer: Jack Sylvan, 875 Howard Street, Suite 330, San Francisco, California 94103, jacksylvan@forestcity.net.

(ii) Port: [ ], Port Project Manager, (415) 274-xxxx, [ ]@sfport.com.

5.2. Amendment. The Parties may amend this Acquisition Agreement from time to time by agreement. Changes to the forms of the Payment Requests as needed to make adjustments to clarify and expedite the payment process under this Acquisition Agreement are ministerial in nature and will not amend this Acquisition Agreement. Changes to **AA Exhibit A** (Horizontal Improvements) and **AA Exhibit B** (Cost Estimates of Components by Phase) may be approved by the Port and the Developer without formal amendment of this Acquisition Agreement.

5.3. Successors and Assigns. This Acquisition Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, as governed by the DDA. This Acquisition Agreement may be assigned only in connection with an assignment of the DDA that is permitted in accordance with its terms.

5.4. Other Agreements. The obligations of Developer under this Acquisition Agreement will be those of a Party and not as an owner of property in the 28-Acre Site. Nothing in this Acquisition Agreement may be construed as affecting the Port's or Developer's rights, or duties to perform their respective obligations under the DDA. If this Acquisition Agreement creates ambiguity in relation to or conflicts with any provision of the Financing Plan, the Financing Plan will prevail.

5.5. Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other Party, or the failure by a Party to exercise its rights upon the

default of the other Party, will not constitute a waiver of such Party's right to later insist upon and demand strict compliance by the other Party with the terms of this Acquisition Agreement.

5.6. Parties in Interest. Nothing in this Acquisition Agreement, expressed or implied, is intended to or will be construed to confer upon or to give to any person or entity other than the Port and Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions, or stipulations of this Acquisition Agreement; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the Port or Developer will be for the sole and exclusive benefit of the Port and Developer.

5.7. Counterparts. This Acquisition Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

Executed as of the last date set forth below.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

By: ______________________
Kevin Ratner,
authorized signatory

Date: ______________________

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Port Commission

By: ______________________
Elaine Forbes,
Executive Director

Date: ______________________

Authorized by Port Resolution No. 17-43
and Board of Supervisors Resolution No. 401-17.

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: ______________________
Joanne Sakai
Deputy City Attorney

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AA EXHIBIT C

Form of Payment Request

PAYMENT REQUEST NO. ______________

PHASE: ______________

PRINCIPAL AMOUNT REQUESTED: $______________ for actual costs of Horizontal Improvements.

To the Chief Harbor Engineer and the Port:

1. I am authorized to execute this Payment Request on behalf of Developer.

2. The costs for which payment is requested:

(a) have not been inflated in any respect;

(b) have not been previously paid;

(c) are not the subject of any previously submitted Payment Requests; and

(d) have been calculated in conformance with the DDA, including the Financing Plan, and the Acquisition Agreement.

3.

[ ] The Acquiring Party has inspected the Horizontal Improvements or Components for which payment is requested (described in **AA Exhibit C1** (Form: Components or Costs Covered by Payment Request)) and determined that they have been constructed in accordance with the DDA. The Horizontal Development Costs of Horizontal Improvements or Components for which payment is requested are not the subject of dispute with any contractor, subcontractor, materialman, or other person who supplied goods or labor, as evidenced by the attached lien releases.

[ ] The Chief Harbor Engineer has inspected the Horizontal Improvements for which payment is requested and determined that they have been constructed in accordance with the DDA. The costs for which payment is requested are not the subject of dispute with any contractor, subcontractor, materialman, or other person who supplied goods or labor, as evidenced by the attached lien releases.

4. Developer is in compliance with the DDA and the Acquisition Agreement.

5. Neither Developer nor any Vertical Developer Affiliate is:

(a) delinquent in the payment of ad valorem real property taxes, possessory interest taxes, Mello-Roos Special Taxes, or special assessments levied on any of the Taxable Parcels it owns or ground leases in the 28-Acre Site; or

(b) in Material Breach of the DDA.

6. When this Payment Request is approved or deemed approved, payments are to be made as follows:

[ ] To Developer, the amount of $ _______________ to its deposit account at the following financial institution by wire, according to the following instructions:

[Insert wiring instructions.]

[ ] Developer pass-throughs in the following amounts to any third party listed below at the specified address:

Name	Amount ($)	Address

By signing below, I certify that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the best of my knowledge based on reasonable investigation and inquiry.

By: ______________________________
Authorized Representative of
FC Pier 70, LLC

Date: ______________________________

Attachments:
[ ] Notice of approval
[ ] Unconditional lien releases from:
[ ] Conditional lien releases from:
[ ] For Completed Horizontal Improvement:
Copy of Chief Harbor Engineer Approval or
Record of Deemed Approval
[ ] AA Exhibit C1

NOTICE TO CHIEF HARBOR ENGINEER

Under section 4.2(c) of the Acquisition Agreement, if you fail to notify Developer that this Payment Request is approved or disapproved within 30 days after you determine that this Payment Request is complete, and the failure continues after the expiration of the electronic notice period under *App ¶ 2.2(c) (No Deemed Consent Without Notice)*, this Payment Request will be **deemed approved.**

Payment Request approved on ____________________

By: ______________________________
Chief Harbor Engineer

AA EXHIBIT C1

Form: Components or Costs Covered by Payment Request

PAYMENT REQUEST NO. ______________
PHASE: ______________

1. The Components (descriptions must match **AA Exhibit B**) or other costs for which payment is requested under this Payment Request are:

____

____

____

____

____

____

2. Information for each contractor, subcontractor, materialman, and other contract for which payment is requested under this Payment Request is shown below.

Name	Contract Amount ($)	Date Paid by Developer	Requested Amount ($)	Previously Paid ($)
Total Requested:				

Attachments:
[ ] Proof of Payment for each amount specified above

FP EXHIBIT B
Form of Requisition

REQUISITION NO. ______________

AMOUNT REQUESTED: $______________.

To the Port Finance Director:

1. I am authorized to execute this Requisition on behalf of Developer.

2. Proof of payment of the amount requested is attached.

3. Developer is in compliance with the DDA and the Acquisition Agreement.

4. Neither Developer nor any Vertical Developer Affiliate is:

(a) delinquent in the payment of ad valorem real property taxes, possessory interest taxes, Mello-Roos Special Taxes, or special assessments levied on any of the Taxable Parcels it owns or ground leases in the 28-Acre Site; or

(b) in Material Breach of the DDA.

5. When this Requisition is approved, payments are to be made as follows:

[ ] To Developer, the amount of $ ______________ to its deposit account at the following financial institution by wire, according to the following instructions:

[Insert wiring instructions.]

[ ] Developer pass-throughs in the following amounts to any third party listed below at the specified address:

Name	Amount ($)	Address

By signing below, I certify that the above representations and warranties and all information provided in this Requisition, including attachments and exhibits, are true and correct to the best of my knowledge based on reasonable investigation and inquiry.

By: ______________________________
Authorized Representative of
FC Pier 70, LLC

Date: ______________________________

Attachments:

[ ] Proof of payment

[ ] Update to the most recent Developer Quarterly Report, reflecting accrual of Allowed Return and Excess Return to the date of the Payment Request and daily accrual rate.

FOR PORT USE ONLY:

Approved Payment No. _______
Date of calculation: __________

Project Payment Sources	**Authorized Uses** **[Insert description of Developer Capital Costs to be paid]**	**Amount to be disbursed ($) for HDCs**	**Developer Return accrued to date & daily accrual**
Advance of Land Proceeds by Credit Bid			
Advance of Land Proceeds in Cash			
Port Capital Advance			
Pay-as-you-go Facilities Special Taxes			
Bonds secured by Facilities Special Taxes and Special Debt Service			
Bonds secured by Facilities Special Taxes only			
Pay-as-you-go Project Tax Increment			
Tax Allocation Bonds			
Subtotals			
Totals			

Payment Agents are authorized to disburse Project Payment Sources consistent with the authorized uses and amounts specified above, with Developer Return accrued up to the date of disbursement.

By: ______________________
Port Finance Director

FP EXHIBIT C

Form of Promissory Note-LP

This **PROMISSORY NOTE-LP** (this "**Note**") is made by **CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 LEASED PROPERTIES)** (the "**Pier 70 Leased Property CFD**") and **CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 CONDOMINIUMS)** ("**Pier 70 Condo CFD**") (each, a "**CFD**"), acting through the Port Commission of San Francisco, as the agent acting on behalf of either or both CFDs (the "**CFD Agent**") as of the last date set forth below.

This Note evidences the CFDs' joint and several promise to pay to the **PORT COMMISSION OF SAN FRANCISCO**, acting in its proprietary capacity (the "**Port**"), the principal amount of each Advance of Land Proceeds (each, an "**Advance**") that the Port will from time to time deliver into the Land Proceeds Fund held by the Special Fund Trustee in accordance with the Financing Plan (the "**Financing Plan**") to the Disposition and Development Agreement between the Port and FC Pier 70, LLC ("**Developer**"), dated as of May 2, 2018 (the "**DDA**"). Initially capitalized and other terms are defined in the Appendix to the DDA, which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents and this Note.

1. **Application of Advances of Land Proceeds.** Within one business day after the Port delivers each Advance, the CFD Agent will provide the following information to the Port for its records and entry on the allonge to this Note:
   - (a) the date of the Advance;
   - (b) the Phase to which the Advance applies;
   - (c) each Approved Payment Request to which funds from the Advance were applied;
   - (d) amounts applied to pay the Developer Balance, accounting separately for amounts applied to:
     - i. the Entitlement Costs;
     - ii. Allowed Developer Return on Entitlement Costs accrued up to the Reference Date;
     - iii. Excess Return on Entitlement Costs accrued up to the Reference Date;
     - iv. Developer Capital spent on Horizontal Development Costs after the Reference Date;
     - v. Allowed Developer Return accrued on the Entitlement Sum and Developer Capital under **clause (iv)** after the Reference Date; and
     - vi. Excess Return accrued on the Entitlement Sum and Developer Capital under **clause (iv)** after the Reference Date;
   - (e) amounts applied to pay the Port Balance, accounting separately for amounts applied to:
     - i. Port Capital spent on Horizontal Development Costs;
     - ii. Allowed Return on Port Capital accrued after the Reference Date; and
     - iii. Excess Return on Port Capital accrued after the Reference Date;
   - (f) amounts applied to pay directly for Horizontal Development Costs; and
   - (g) any balance of the Advance remaining in the Land Proceeds Fund.

2. **Principal Balance and Interest**. The principal balance of this Note will be the sum of the Advances, less the sum of amounts applied to Excess Return and the portion of payments made by the CFDs that are applied to the principal balance. Interest will accrue on the unpaid principal amount of each Advance from the date the Advance is made until the principal amount is paid in full, at an annual rate of XXXX percent, compounded quarterly. [***Note: Port and Developer will agree on the interest rate for Advances of Land Proceeds, which will not exceed the bond buyer index rate on the Reference Date, before the parties seek Board of Supervisors approval of the resolutions approving the CFD Formation Proceedings.***]

3. **Sources of Repayment**. The CFD Agent will instruct the Special Fund Trustee or the Indenture Trustee, as applicable, to make payments to the Port under this Note from available Public Financing Sources according to the priorities established under the Financing Plan. The Port will make entries on the allonge to reflect the date and application of each payment, including amounts paid to Developer and the Port.

4. **Wiring Instructions**. Unless the Port directs otherwise, the CFD Agent must tender each payment to be applied to this Note by wire to the Land Proceeds Fund as follows:

[Insert wiring instructions.]

5. **Annual Payments**. In accordance with the Financing Plan, the CFD Agent must make annual payments on this Note, subject to the Interest Cost Limitation. The first payment date under this Paragraph will be 10 business days after the Controller's next disbursement of Mello-Roos Special Taxes or Allocated Tax Increment to the Special Fund Trustee. Until the principal balance and accrued interest on this Note have been paid in full, additional payments will be due annually.

6. **Prepayments**. The CFD Agent may prepay the principal balance and accrued interest on this Note without penalty.

Executed at San Francisco, California on ___ __________________, 2018.

PIER 70 LEASED PROPERTY CFD:

CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 LEASED PROPERTIES)

By: City and County of San Francisco, through the San Francisco Port Commission

Its: Agent

By: __________________________

Elaine Forbes
Port Director

Executed at San Francisco, California on ___ __________________, 2018.

PIER 70 CONDO CFD:

CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 CONDOMINIUMS)

By: City and County of San Francisco, through the San Francisco Port Commission

Its: Agent

By: __________________________

Elaine Forbes
Port Director

Authorized by the Port Resolution No. 17-43
and Board Resolution No. ________

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: ___________________________
Joanne Sakai
Deputy City Attorney

Authorized by the Port Resolution No. 17-43
and Board Resolution No. ________

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: ___________________________
Joanne Sakai
Deputy City Attorney

ALLONGE TO PROMISSORY NOTE-LP

USES OF PORT ADVANCES

Date & Phase	Amount of Port Advance	Entitlement Sum	Developer's Phase Horiz Dev Costs	Developer's Allowed Return	Port Phase Horiz Dev Costs	Port's Allowed Return

PAYMENTS APPLIED TO HORIZONTAL DEVELOPMENT COSTS AND ALLOWED RETURN

Date	Amount Paid	Source of Payment	Principal balance on payment date	Accrued interest on payment date	Applied to principal balance	Applied to interest

FORM OF PARTIAL ASSIGNMENT

The Port Commission of San Francisco hereby:

1. assigns to FC Pier 70, LLC, or its designee ("Assignee"), the Developer Share of all amounts as they become due and payable under Promissory Note-LP, made by City and County of San Francisco Special Tax District No. 2018- __ (Pier 70 Leased Properties) and City and County of San Francisco Special Tax District No. 2018- __ (Pier 70 Condominiums) (the "Note"); and
2. irrevocably waives any right to receive the Developer Share of amounts due and payable under the Note.

This Partial Assignment will be effective immediately upon delivery to Assignee.

City and County of San Francisco,
through the San Francisco Port Commission

By: ____________________________
Elaine Forbes
Port Director

Date:

FP EXHIBIT D

Form of Promissory Note-X

This **PROMISSORY NOTE-X** (this "**Note**") is made by **CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 LEASED PROPERTIES)** (the "**Pier 70 Leased Property CFD**") and **CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 CONDOMINIUMS)** ("**Pier 70 Condo CFD**") (each, a "**CFD**"), acting through the Port Commission of San Francisco, as the agent acting on behalf of either or both CFDs (the "**CFD Agent**") as of the last date set forth below.

This Note evidences the CFDs' joint and several promise to pay to the **PORT COMMISSION OF SAN FRANCISCO**, acting in its proprietary capacity (the "**Port**") the amounts described in Paragraph 2. Initially capitalized and other terms are defined in the Appendix to the DDA, which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents and this Note.

1. **Relationship to Promissory Note-LP.** This Note is a companion to Promissory Note-LP, which the CFDs delivered to the Port in connection with each Advances of Land Proceeds (each, an "**Advance**") that the Port will from time to time deliver into the Land Proceeds Fund held by the Special Fund Trustee in accordance with the Financing Plan (the "**Financing Plan**") to the Disposition and Development Agreement between the Port and FC Pier 70, LLC ("**Developer**"), dated as of XXXX (the "**DDA**"). The allonge to Promissory Note-LP will serve as the allonge to this Note.

2. **Principal Balance and Interest.** The principal balance of this Note will be the sum of the portion of each Advance that is applied to Excess Return, as shown on the allonge from time to time. Interest will accrue on the unpaid principal balance at an annual rate of XXXX percent, compounded quarterly, until paid in full.

3. **Sources of Repayment.** The CFD Agent will instruct the Special Fund Trustee or the Indenture Trustee, as applicable, to make payments to the Port under this Note from available Public Financing Sources, subject to the Interest Cost Limitation.

4. **Wiring Instructions.** Unless the Port directs otherwise, the CFD Agent must tender each payment to be applied to this Note by wire as follows:

   [Insert wiring instructions.]

   The Port will make entries on the allonge to reflect the date and application of each CFD payment.

5. **Annual Payments.** After all Project Payment Obligations and Promissory Note-LP have been paid in accordance with the Financing Plan, the CFD Agent must make annual payments on this Note. The first payment date under this Paragraph will be 10 business days after the Controller's next disbursement of Mello-Roos Special Taxes to the Special Fund Trustee. Until the principal balance and accrued interest on this Note have been paid in full, additional payments will be due annually.

6. **Prepayments.** The CFD Agent may prepay the principal balance and accrued interest on this Note without penalty.

Executed at San Francisco, California on ___ __________________, 20___.

PIER 70 LEASED PROPERTY CFD:

CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 LEASED PROPERTIES)

By: City and County of San Francisco, through the San Francisco Port Commission
Its: Agent

By: ___________________________
Elaine Forbes
Port Director

Authorized by the Port Resolution No. 17-43 and Board Resolution No. ________

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: ___________________________
Joanne Sakai
Deputy City Attorney

Executed at San Francisco, California on ___ __________________, 20___.

PIER 70 CONDO CFD:

CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 CONDOMINIUMS)

By: City and County of San Francisco, through the San Francisco Port Commission
Its: Agent

By: ___________________________
Elaine Forbes
Port Director

Authorized by the Port Resolution No. 17-43 and Board Resolution No. ________

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: ___________________________
Joanne Sakai
Deputy City Attorney

FP EXHIBIT E

Term Sheet: Rate and Method of Apportionment for Pier 70 Leased Property, Pier 70 Condo Property CFD, and Hoedown Yard CFD

The Port and Developer have agreed that the RMAs for the Pier 70 Leased Property CFD, the Pier 70 Condo CFD, and the Hoedown Yard CFD shall be drafted consistent with the provisions below, subject to the approval by the Board of Supervisors. Capitalized terms used herein that are not defined shall have the meanings given such terms in the Appendix.

Under Financing Plan Section 4.13, Concurrent with the CFD Formation Proceedings, the Port and Developer in consultation with the City will negotiate in good faith regarding amendments to the DDA, Financing Plan, and Master Lease as required to address orderly foreclosure processes for both the Pier 70 Leased Property CFD and the Pier 70 Condo CFD. If the revisions would be a material change to the approved transaction documents, the Port and Developer will seek Port Commission and Board of Supervisors approval of the agreed amendments to the DDA, Financing Plan, and Master Lease in the Board of Supervisor's resolution approving the CFD Formation Proceedings (or companion legislation to be approved at the same time), and in a separate Port Commission resolution.

A. For Pier 70 Leased Properties CFD

1. Classes of Property:
   - "Developed Property" defined as follows:
     - *For levy of the Facilities Special Tax and Arts Building Special Tax*: all Taxable Parcels for which the 24-month anniversary of the date of the Vertical DDA has occurred during the previous Fiscal Year, regardless of whether or not a Building Permit has been issued.
     - *For levy of the Shoreline Special Tax and Services Special Tax*: all Taxable Parcels for which a TCO was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.
   - "Undeveloped Property" defined as
     - all Taxable Parcels that are not Developed Property.

2. Preliminary Special Tax Rates per gross square foot for Developed Property (subject to review):

Land Use	Facilities Special Tax	Shoreline Special Tax		Arts Building Special Tax	Services Special Tax
		Zone 1	Zone 2		
Non-Residential	$3.60	$0.55	$0.82	$0.51	$1.00

Rental less than 70 Feet	$3.59	$0.55	$0.80	$0.41	$0.81
Rental greater than or equal to 70 Feet	$3.80	$0.58	$0.87	$0.41	$0.81
Building 12	$3.38	Exempt	Exempt	Exempt	Exempt
Building 21	$3.50	Exempt	Exempt	Exempt	Exempt

3. Escalators:

- Facilities Special Tax: 2% annually.
- Shoreline Special Tax: 2% annually.
- Arts Building Special Tax: 2% annually.
- Services Special Tax: the lesser of the following: (i) the annual increase, if any, in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region (base years 1982-1984=100) published by the Bureau of Labor Statistics of the United States Department of Labor, or, if such index is no longer published, a similar escalator that is determined by the Port and City to be appropriate, and (ii) five percent (5%).

4. Uses of Special Taxes: See the Financing Plan, including Schedule 4.

5. Commencement of Special Taxes:

- Facilities Special Tax: on Developed Property, at the maximum special tax, regardless of debt service; no levy on Undeveloped Property unless bonds issued.
- Shoreline Special Tax: on Developed Property only at the maximum special tax, regardless of debt service; no levy on Undeveloped Property at any time.
- Arts Building Special Tax: on Developed Property only at the maximum special tax, regardless of debt service; no levy on Undeveloped Property at any time.
- Services Special Tax: on Developed Property only; no levy on Undeveloped Property at any time.

6. Terms of Special Taxes:

- The Facilities Special Tax shall be levied and collected on a Taxable Parcel until the earlier of: (i) the Fiscal Year in which the Port determines that all Authorized Expenditures that will be funded by the Leased Property CFD have been funded and all Bonds have been fully repaid, (ii) the Fiscal Year in which Tax Increment is no longer collected within the Sub-Project Area within which the Parcel is located, as determined by the Administrator with direction from the Deputy Director, and (iii) a Fiscal Year in the future to be determined at the time of formation of the Leased Property CFD.
- The Shoreline Special Tax shall be levied on and collected from each Taxable Parcel for 120 Fiscal Years.

- The Arts Building Special Tax shall be levied and collected until the earlier of: (i) the Fiscal Year in which $20 million in Arts Building Costs have been funded and all Arts Building Bonds have been fully repaid, and (ii) Fiscal Year 2080-81.

- The Services Special Tax shall be levied and collected in perpetuity.

7. Initial Parcels and Annexation:

   - Initial Parcels:

     - Zone 1 will initially include all Development Parcels to be developed as NOI Property in Phase 1 other than Historic Building 12.

     - Zone 2 will initially include all Development Parcels to be developed as NOI Property in future phases except Historic Building 21 and the Future Annexation Area.

     - Zone 3 will include Historic Building 12 and Historic Building 21.

   - RMA will provide for the future annexation of additional Leased Property from among the Future Annexation Area parcels (i.e., E1, F, G, H1, H2, E4, PKS and C1A).

8. Administrative Reduction of Taxes
   - Applies only to Facilities Special Tax and Shoreline Special Tax.
   - The Port and Developer will have the opportunity prior to issuance of first series of Bonds in the Pier 70 Leased Property CFD to agree to reduce special tax rates to reflect then-current valuation estimates, if lower (assuming a 20% buffer). If the special tax rates for one or more Zones are not pledged to Bonds, then, subject to the Port's approval, the special tax rates in such Zones may be reduced until Bonds secured by such special tax rates are issued.

9. Credit for Tax Increment
   - A parcel shall be entitled to a credit against the Facilities Special Tax from the tax increment received from that parcel (and from any tax increment generated in City and County of San Francisco Infrastructure Financing District No. 2, Sub-Project Areas G-2, G-3, and G-4 that is available after satisfying higher-priority items as set forth in the Financing Plan should the amount of tax increment received from the parcel not be sufficient to offset the Facilities Special Tax on that parcel), but only under the following circumstances:
     - The parcel has paid its ad valorem and Facilities Special Taxes (if any) in the previous year (i.e., delinquent parcels are not entitled to any credit); and
     - The parcel is an Assessed Parcel..

   - The term "Assessed Parcel" means NOI Property that meets all four of the following conditions: (i) the NOI Property has one or more buildings that have

been constructed or rehabilitated on the NOI Property and a TCO has been granted for such newly-constructed or newly-rehabilitated building(s); (ii) the newly-constructed or newly-rehabilitated building(s) have been fully-assessed by the County Assessor; (iii) the County Assessor has levied ad valorem taxes on the NOI Property based on the full value of the newly-constructed or newly-rehabilitated building(s); and (iv) the NOI Property has paid in full at least one year of these ad valorem taxes based upon the full value of the newly-constructed or newly-rehabilitated building(s).

- The mechanics and timing of the application of the credit will be determined in the Financing Plan and in connection with the drafting of the RMAs.

- The RMA will determine the establishment of appropriate tax increment and backup funds and the priority of funding of the accounts. In addition, the Parties will determine in the RMA how the Leased Properties Backup Fund will be replenished.

10. Miscellaneous

- Definition of Special Tax Requirement applicable to the Facilities Special Tax should **exclude** Administrative Expenses, which shall be collected from Arts Building Special Tax, Shoreline Special Tax, and/or Services Special Tax.

- Prepayment shall not be provided for any of the special taxes.

- The Shoreline Special Tax, the Arts Building Special Tax, and the Services Special Tax shall **not** be levied on Historic Buildings 12 and 21.

- The 10% delinquency limitation shall be applicable to all property in the Leased Property CFD (i.e., residential and non-residential property).

B. For Pier 70 Condo CFD

1. Classes of Property:
   For Zone 1:

- "Developed Property" defined as follows:
  - *For levy of the Facilities Special Tax*: on a Taxable Parcel, at the earliest of:

    (i) the Fiscal Year commencing when the 36 month anniversary of the date that the Vertical DDA has occurred, or will occur, during the Fiscal Year; and

    (ii) the Fiscal Year commencing after the date the Port first issues a Temporary Certificate of Occupancy (TCO) for a building on the parcel on or prior to June 30 of the preceding Fiscal Year.

  - *For levy of the Services Special Tax*: all Taxable Parcels for which a TCO was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

- "Building Permit Property" defined as follows:
  - all Taxable Parcels that are not Developed Property for which a Building Permit was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

- Vertical DDA Property" defined as follows:
  - any Parcel that is not yet Developed Property or Building Permit Property against which a Vertical DDA has been recorded, and for which the Developer or the Vertical Developer has, by June 30 of the prior Fiscal Year, notified the Administrator of such recording.

- "Undeveloped Property" defined as
  - all Taxable Parcels that are not Developed Property, Building Permit Property, or Vertical DDA Property.

For Zone 2, unless Port and Developer, each in their sole discretion, agree to create the Building Permit Property class and treat Developed Property in the same manner as Zone 1:

- "Developed Property" defined as follows:
  - *For levy of the Facilities Special Tax and Arts Building Special Tax*: all Taxable Parcels (i) for which a Building Permit was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018, or (ii) Vertical DDA Property that has not pulled a Building Permit if the 36

month anniversary of the date of the Vertical DDA has occurred, or will occur, during the Fiscal Year.

- *For levy of the Services Special Tax*: all Taxable Parcels for which a TCO was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

- "Vertical DDA Property" defined as follows:
  - any Parcel that is not yet Developed Property against which a Vertical DDA has been recorded, and for which the Developer or the Vertical Developer has, by June 30 of the prior Fiscal Year, notified the Administrator of such recording.

- "Undeveloped Property" defined as
  - all Taxable Parcels that are not Developed Property or Vertical DDA Property.

2. Preliminary Special Tax Rates per net square foot for Developed Property (subject to review):

Zone	Land Use	Facilities Special Tax	Arts Building Special Tax	Services Special Tax
Zone #1	Parcel K North	$5.02	Exempt	$1.57
Zone #2	Condominiums	$4.70	$0.64	$1.25

3. Escalators:

- Facilities Special Tax: 2% annually.

- Arts Building Special Tax: 2% annually.

- Services Special Tax: the lesser of the following: (i) the annual increase, if any, in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region (base years 1982-1984=100) published by the Bureau of Labor Statistics of the United States Department of Labor, or, if such index is no longer published, a similar escalator that is determined by the Port and City to be appropriate, and (ii) five percent (5%).

4. Uses of Special Taxes: See the Financing Plan, including Schedule 4.

5. Commencement of Special Taxes:

- Facilities Special Tax: on all land use classes in accordance with the apportionment section; levy at maximum assigned tax rates on Developed Property regardless of

debt service; no levy on Building Permit Property, Vertical DDA Property, or Undeveloped Property unless bonds issued.

- Arts Building Special Tax: on Developed Property only, regardless of debt service; no levy on Building Permit Property, Vertical DDA Property, or Undeveloped Property at any time.

- Services Special Tax: on Developed Property only; no levy on Building Permit Property, Vertical DDA Property, or Undeveloped Property at any time.

6. Terms of Special Taxes:

   - The Facilities Special Tax shall be levied on and collected from each Taxable Parcel for 120 Fiscal Years.

   - The Arts Building Special Tax shall be levied, collected and applied to Arts Building Costs until the Fiscal Year in which $20 million in Arts Building Costs have been funded and all Arts Building Bonds have been fully repaid. Thereafter, the Arts Building Special Tax shall convert to a Services Special Tax and shall be levied and collected in perpetuity.

   - The Services Special Tax shall be levied and collected in perpetuity.

7. Initial Parcels and Annexation:

   - Initial Parcels:
     - Zone 1: Parcel K North
     - Zone 2: Parcels C1C, C2B, and D.

   - RMA will provide for the future annexation of additional Condo Property from among the Future Annexation Area parcels (i.e., E1, F, G, H1, H2, E4, PKS and C1A).

8. Administrative Reduction of Taxes
   - Applies only to the Facilities Special Tax.

   - Special tax rates reduced prior to issuance of first series of Bonds so as to be consistent with the agreed-upon overall tax rate.

9. Miscellaneous
   - The Arts Building Special Tax shall **not** be levied on Parcel K North.

   - The 10% delinquency limitation shall be applicable to all property in the Pier 70 Condo CFD (i.e., residential and non-residential property).

- When Bonds are issued, capitalized interest will be allocated after the apportionment of the Special Tax to Developed Property but before the apportionment of Special Tax on any Building Permit Property, Vertical DDA Property, and Undeveloped Property.

C. For Hoedown Yard CFD

1. Classes of Property:
The Port may elect to create the Building Permit Property class and treat Developed Property in the Hoedown Yard CFD the same as Zone 1 of the Pier 70 Condo CFD.

"Developed Property" defined as follows:
   - *For levy of the Facilities Special Tax*: all Taxable Parcels (i) for which a Building Permit was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018, or (ii) Vertical DDA Property that has not pulled a Building Permit if the 36 month anniversary of the date of the Vertical DDA has occurred, or will occur, during the Fiscal Year.

   - *For levy of the Services Special Tax*: all Taxable Parcels for which a TCO was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

- "Vertical DDA Property" defined as follows:
   - any Parcel that is not yet Developed Property against which a Vertical DDA has been recorded, and for which the Developer or the Vertical Developer has, by June 30 of the prior Fiscal Year, notified the Administrator of such recording

- "Undeveloped Property" defined as
   - all Taxable Parcels that are not Developed Property or Vertical DDA Property.

2. Preliminary Special Tax Rates per net square foot for Developed Property (subject to review):

Land Use	Facilities Special Tax	Services Special Tax
Condominiums	$4.96	$1.56

3. Escalators:

- Facilities Special Tax: 2% annually.

- Services Special Tax: the lesser of the following: (i) the annual increase, if any, in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region (base years 1982-1984=100) published by the Bureau of Labor Statistics of the United States Department of Labor, or, if such index is no longer published, a similar escalator that is determined by the Port and City to be appropriate, and (ii) five percent (5%).

4. Uses of Special Taxes: See the Financing Plan, including Schedule 4.

5. Commencement of Special Taxes:

   - Facilities Special Tax: on all land use classes in accordance with the apportionment section; levy at maximum assigned tax rates on Developed Property regardless of debt service; no levy on Vertical DDA Property or Undeveloped Property unless bonds issued.

   - Services Special Tax: on Developed Property only; no levy on Vertical DDA Property or Undeveloped Property at any time.

6. Terms of Special Taxes:

   - The Facilities Special Tax shall be levied on and collected from each Taxable Parcel for 120 Fiscal Years.

   - The Services Special Tax shall be levied and collected in perpetuity.

7. Initial Parcels:

   - Initial Parcels: HDY1, HDY2, and HDY3.

8. Miscellaneous
   - The 10% delinquency limitation shall be applicable to all property in the Hoedown Yard CFD (i.e., residential and non-residential property).

FP SCHEDULE 1 - SUMMARY PRO-FORMA UNDERWRITING (a)

A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES

Upfront Project Entitlement Expenditures	$	33,440,730
Phase I Infrastructure	$	149,544,813
Phase II Infrastructure	$	87,162,871
Phase III Infrastructure	$	60,771,977
Total Horizontal Infrastructure Uses	$	330,920,391

B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES

CFD/IFD Bonds - Debt Service Paid by Tax Increment		
Phase I IFD Bonds	$	62,680,685
Phase II IFD Bonds	$	40,679,584
Phase III IFD Bonds	$	65,063,440
Total CFD/IFD Bonds - Debt Service Paid by Tax Increment	$	168,423,709
Pay Go Tax Increment Applied to Project	$	195,734,586
Condominium CFD Facilities Tax Proceeds	$	42,149,125
Project Reserve Proceeds from Sea Level Rise CFD Tax	$	8,844,121
Total Horizontal Infrastructure Investment Sources	$	415,151,541

C.) MASTER DEVELOPER PEAK EQUITY (b)

Phase I	$	80,556,347
Phase II	$	27,653,165
Phase III	$	20,127,914

D.) PREPAID AND ANNUAL GROUND RENT

A-1 (Office)	$	13,334,094
KN (Resi)	$	27,204,716
E2 (Resi)	$	10,451,777
C-2B (Resi)	$	7,971,138
2 (Resi)	$	15,768,039
D-1 (Resi)	$	16,811,510
F-G (Office)	$	32,775,048
E1 (Resi)	$	18,940,015
E3 (Resi)	$	3,837,644
B-1 - B-2 (Office)	$	50,427,349
C-1A (Office)	$	214,055,803
C-1C (Resi)	$	9,492,272
H-1 (Resi)	$	11,822,625
H-2 (Resi)	$	31,277,816
Total Prepaid and Annual Ground Rent	$	464,169,846

E.) PROJECT NET CASH FLOW

Horizontal Infrastructure Costs	$	(330,920,391)
Buildings 12 and 21 Feasibility Gap	$	(9,034,622)
CFD/IFD Bonds - Debt Service Paid by Tax Increment	$	168,423,709
Pay Go Tax Increment	$	195,734,586
Condominium CFD Facilites Tax Proceeds	$	42,149,125
Project Reserve from Sea Level Rise Tax Proceeds	$	8,844,121
Ground Rent Payments	$	464,169,846
Total Project Profit	$	539,366,375

F.) DISTRIBUTION OF PROFIT

Master Developer Return on Investment	$	165,645,152
Profit Sharing:		
Master Developer Profit Participation - Prepaid Annual Ground Rent	$	-
Master Developer Profit Participation - Prepaid Ground Rent	$	71,849,439
Port of San Francisco Profit Participation - Annual Ground Rent	$	214,055,803
Port of San Francisco Profit Participation - Prepaid Ground Rent	$	87,815,981
Total Master Developer Profit	$	237,494,591
Total Port of San Francisco Profit	$	301,871,784
Total Project Profit	$	539,366,375

G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT

Port Annual Ground Rent (Including Parcel C-1A)	$	214,055,803
Port Share of Prepaid Ground Rent	$	87,815,981
1.5% of Net Proceeds from Refinancings	$	193,711,186
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenues	$	1,769,224,499
Condominium Resale Transfer Fees	$	1,684,030,812
Total Port of San Francisco Net Economic Benefit	$	3,948,838,281

H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION

Port's 8 Cents of Tax Increment	$	144,713,432
Unused Tax Increment to Port after Project is Complete	$	549,601,901
Total Tax Increment to Port for Pier 70 Wide Facilities and City Shoreline Protection	$	694,315,333

I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION

Available Sea Level Rise CFD Tax Proceeds	$	281,732,886
Available Condominium CFD Facilites Tax Proceeds	$	1,387,454,026
Unused Project Reserve Proceeds from Sea Level Rise CFD Tax	$	489,137,236
Unused Condominium CFD Facilities Tax Proceeds Applied to Project	$	1,696,025
Total CFD Tax Revenues for City Shoreline Protection	$	2,160,020,173

Notes:

**** All numbers are preliminary estimates and subject to further change. ****

(a) Numerical estimates are expressed in nominal terms unless otherwise denoted.
(b) Estimated peak equity assuming development of each phase on a stand-alone basis.

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITING (a)	TOTAL	2011 YEAR 1	2012 YEAR 2	2013 YEAR 3	2014 YEAR 4	2015 YEAR 5	2016 YEAR 6	2017 YEAR 7	2018 YEAR 8	2019 YEAR 9	2020 YEAR 10	2021 YEAR 11	2022 YEAR 12	2023 YEAR 13	2024 YEAR 14	2025 YEAR 15	2026 YEAR 16	2027 YEAR 17	2028 YEAR 18
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Project Entitlement Expenditure	33,440,730	1,334,232	2,489,322	2,982,397	4,598,583	5,653,196	10,313,000	6,070,000	-	-	-	-	-	-	-	-	-	-	-
Phase I Infrastructure	149,544,813	-	-	-	-	-	-	-	13,781,753	41,137,323	58,662,964	35,962,773	-	-	-	-	-	-	-
Phase II Infrastructure	87,162,871	-	-	-	-	-	-	-	-	-	-	-	12,879,376	43,257,250	31,026,245	-	-	-	-
Phase III Infrastructure	60,771,977	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7,938,653	13,937,032	18,768,379	20,127,914
Total Horizontal Infrastructure Uses	330,920,391	1,334,232	2,489,322	2,982,397	4,598,583	5,653,196	10,313,000	6,070,000	13,781,753	41,137,323	58,662,964	35,962,773	12,879,376	43,257,250	31,026,245	7,938,653	13,937,032	18,768,379	20,127,914
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Incremen																			
Phase I CFD/IFD Bonds	62,680,685	-	-	-	-	-	-	-	-	16,882,139	13,832,839	-	17,276,277	-	14,689,429	-	-	-	-
Phase II CFD/IFD Bonds	40,679,584	-	-	-	-	-	-	-	-	-	-	-	-	29,567,890	-	-	-	11,111,695	-
Phase III CFD/IFD Bonds	65,063,440	-	-	-	-	-	-	-	-	-	-	-	-	-	5,586,434	-	35,531,464	-	-
Total CFD/IFD Bonds - Debt Service Paid by Tax Incremen	168,423,709	-	-	-	-	-	-	-	-	16,882,139	13,832,839	-	17,276,277	29,567,890	20,275,862	-	35,531,464	11,111,695	-
Pay Go Tax Increment Applied to Proje	195,734,586	-	-	-	-	-	-	-	-	-	-	1,239,731	1,015,807	480,080	1,040,838	4,584,814	2,527,111	2,124,718	6,841,684
Condominium CFD Facilities Tax Proceed	42,149,125	-	-	-	-	-	-	-	7,749,956	2,746,134	5,735,497	-	59,581	6,351,064	108,632	110,805	13,231,506	149,589	152,561
Project Reserve Proceeds from Sea Level Rise CFD Ta	8,844,121	-	-	-	-	-	-	-	-	-	-	-	-	451,545	298,365	304,333	821,780	902,625	953,527
Total Horizontal Infrastructure Investment Source	415,151,541	-	-	-	-	-	-	-	7,749,956	19,628,274	19,568,336	1,239,731	18,351,665	36,850,578	21,723,608	4,999,951	52,111,862	14,288,607	7,947,771
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	80,556,347	1,334,232	3,823,554	6,805,951	11,404,534	17,057,730	27,370,730	33,440,730	33,440,730	30,102,772	55,260,850	80,556,347	67,192,422	44,482,947	25,167,979	21,715,724	-	-	-
Phase II	27,653,165	-	-	-	-	-	-	-	-	-	-	-	12,879,376	22,846,959	27,653,165	27,653,165	27,653,165	27,653,165	27,653,185
Phase III	20,127,914	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7,938,653	-	-	20,127,914
D.) PREPAID AND ANNUAL GROUND RENT																			
A-1 (Office)	13,334,094	-	-	-	-	-	-	-	-	-	2,666,819	10,667,275	-	-	-	-	-	-	-
KN (Resi)	27,204,716	-	-	-	-	-	-	-	27,204,716	-	-	-	-	-	-	-	-	-	-
E2 (Resi)	10,451,777	-	-	-	-	-	-	-	-	10,451,777	-	-	-	-	-	-	-	-	-
C-2B (Resi)	7,971,138	-	-	-	-	-	-	-	-	7,971,138	-	-	-	-	-	-	-	-	-
2 (Resi)	15,768,039	-	-	-	-	-	-	-	-	15,768,039	-	-	-	-	-	-	-	-	-
D-1 (Resi)	16,811,510	-	-	-	-	-	-	-	-	-	16,811,510	-	-	-	-	-	-	-	-
F-G (Office)	32,775,048	-	-	-	-	-	-	-	-	-	-	-	-	6,555,010	26,220,038	-	-	-	-
E1 (Resi)	18,940,015	-	-	-	-	-	-	-	-	-	-	-	-	18,940,015	-	-	-	-	-
E3 (Resi)	3,837,644	-	-	-	-	-	-	-	-	-	-	-	-	3,837,644	-	-	-	-	-
B-1 - B-2 (Office)	50,427,349	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10,085,470	40,341,879	-
C-1A (Office)	214,055,803	-	-	-	-	-	-	-	-	-	-	-	-	-	-	383,652	374,561	385,798	397,372
C-1C (Resi)	9,492,272	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9,492,272	-	-
H-1 (Resi)	11,822,625	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11,822,625	-	-
H-2 (Resi)	31,277,816	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	31,277,816	-	-
Total Prepaid and Annual Ground Rent	464,169,846	-	-	-	-	-	-	-	27,204,716	34,190,954	19,478,329	10,667,275	-	29,332,669	26,220,038	383,652	63,052,745	40,727,677	397,372
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Costs	(330,920,391)	(1,334,232)	(2,489,322)	(2,982,397)	(4,598,583)	(5,653,196)	(10,313,000)	(6,070,000)	(13,781,753)	(41,137,323)	(58,662,964)	(35,962,773)	(12,879,376)	(43,257,250)	(31,026,245)	(7,938,653)	(13,937,032)	(18,768,379)	(20,127,914)
Buildings 12 and 21 Feasibility Gap	(9,034,622)	-	-	-	-	-	-	-	-	-	-	-	-	(4,314,837)	-	-	(4,719,785)	-	-
CFD/IFD Bonds - Debt Service Paid by Tax Incremen	168,423,709	-	-	-	-	-	-	-	-	16,882,139	13,832,839	-	17,276,277	29,567,890	20,275,862	-	35,531,464	11,111,695	-
Pay Go Tax Incremen	195,734,586	-	-	-	-	-	-	-	-	-	-	1,239,731	1,015,807	480,080	1,040,838	4,584,814	2,527,111	2,124,718	6,841,684
Condominium CFD Facilities Tax Proceed	42,149,125	-	-	-	-	-	-	-	7,749,956	2,746,134	5,735,497	-	59,581	6,351,064	108,632	110,805	13,231,506	149,589	152,561
Project Reserve from Sea Level Rise Tax Procee	8,844,121	-	-	-	-	-	-	-	-	-	-	-	-	451,545	298,365	304,333	821,780	902,625	953,527
Ground Rent Payments	464,169,846	-	-	-	-	-	-	-	27,204,716	34,190,954	19,478,329	10,667,275	-	29,332,669	26,220,038	383,652	63,052,745	40,727,677	397,372
Total Project Profit	539,366,375	(1,334,232)	(2,489,322)	(2,982,397)	(4,598,583)	(5,653,196)	(10,313,000)	(6,070,000)	21,172,919	12,681,905	(19,616,299)	(24,055,767)	5,472,289	18,611,161	16,917,432	(2,575,050)	86,507,789	36,247,906	(11,782,771)
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investment	165,645,152	-	-	-	-	-	-	-	21,172,919	9,343,947	5,541,778	1,239,731	4,987,740	9,826,267	2,408,730	1,547,696	68,659,135	18,322,747	1,480,147
Profit Sharing.																			
Master Developer Profit Participation - Prepaid Annual Ground Re	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Master Developer Profit Participation - Prepaid Ground Re	71,849,439	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Port of San Francisco Profit Participation - Annual Ground Rer	214,055,803	-	-	-	-	-	-	-	-	-	-	-	-	-	-	383,652	374,561	385,798	397,372
Port of San Francisco Profit Participation - Prepaid Ground Rer	87,815,981	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Master Developer Prof	237,494,591	-	-	-	-	-	-	-	21,172,919	9,343,947	5,541,778	1,239,731	4,987,740	9,826,267	2,408,730	1,547,696	68,659,135	18,322,747	1,480,147
Total Port of San Francisco Profi	301,871,784	-	-	-	-	-	-	-	-	-	-	-	-	-	-	383,652	374,561	385,798	397,372
Total Project Profit	539,366,375	-	-	-	-	-	-	-	21,172,919	9,343,947	5,541,778	1,239,731	4,987,740	9,826,267	2,408,730	1,911,348	69,033,696	18,708,545	1,877,519
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT																			
Port Annual Ground Rent (Including Parcel C-1A	214,055,803	-	-	-	-	-	-	-	-	-	-	-	-	-	-	383,652	374,561	385,798	397,372
Port Share of Prepaid Ground Ren	87,815,981	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1.5% of Net Proceeds from Refinancing:	193,711,186	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	1,769,224,499	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Condominium Resale Transfer Fee:	1,684,030,812	-	-	-	-	-	-	-	-	-	-	-	-	77,427	180,604	334,209	496,869	668,986	900,784
Total Port of San Francisco Economic Benef	3,948,838,281	-	-	-	-	-	-	-	-	-	-	-	-	77,427	180,604	697,861	871,430	1,054,784	1,298,156
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	144,713,432	-	-	-	-	-	-	-	-	-	-	-	-	202,961	383,505	708,353	722,520	736,970	1,260,574
Unused Tax Increment to Port after Project is Complet	549,601,901	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protection	694,315,333	-	-	-	-	-	-	-	-	-	-	-	-	202,961	383,505	708,353	722,520	736,970	1,260,574
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceed	281,732,886	-	-	-	-	-	-	-	-	-	-	-	53,010	97,505	99,455	101,444	273,927	343,815	317,842
Available Condominium CFD Facilities Tax Proceed	1,387,454,026	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	489,137,236	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	1,696,025	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total CFD Tax Revenues for City Shoreline Protection	2,160,020,173	-	-	-	-	-	-	-	-	-	-	-	53,010	97,505	99,455	101,444	273,927	343,815	317,842

Notes:

*** *All numbers are preliminary estimates and subject to further change* ***

(a) Numerical estimates are expressed in nominal terms unless otherwise denoted.

(b) Estimated peak equity assuming development of each phase on a stand-alone basis

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2029 YEAR 19	2030 YEAR 20	2031 YEAR 21	2032 YEAR 22	2033 YEAR 23	2034 YEAR 24	2035 YEAR 25	2036 YEAR 26	2037 YEAR 27	2038 YEAR 28
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES										
Upfront Project Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES										
CFD/IFD Bonds - Debt Service Paid by Tax Incremen										
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ 23,945,542	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ 23,945,542	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Projec	$ 4,011,127	$ 4,171,153	$ 6,337,138	$ 6,588,045	$ 6,843,970	$ 7,105,013	$ 7,371,278	$ 7,642,867	$ 7,919,889	$ 8,202,451
Condominium CFD Facilities Tax Proceed	$ 155,812	$ 230,404	$ 235,012	$ 239,712	$ 244,506	$ 249,397	$ 254,384	$ 259,472	$ 264,662	$ 269,955
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 1,587,095	$ 1,518,837	$ 1,403,240	$ 502,767	$ (0)	$ 0	$ (0)	$ 0	$ (0)	$ 0
Total Horizontal Infrastructure Investment Source	$ 5,753,834	$ 29,965,936	$ 7,975,398	$ 7,330,524	$ 7,088,476	$ 7,354,410	$ 7,625,662	$ 7,902,339	$ 8,184,550	$ 8,472,405
C.) MASTER DEVELOPER PEAK EQUITY (b)										
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ 27,653,165	$ 27,653,165	$ 27,653,165	$ 27,653,165	$ 27,653,165	$ 27,653,165	$ 27,579,197	$ 21,177,384	$ 14,210,487	$ 6,647,509
Phase III	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914
D.) PREPAID AND ANNUAL GROUND REN										
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ 409,293	$ 421,572	$ 434,219	$ 447,246	$ 460,663	$ 474,483	$ 488,717	$ 503,379	$ 518,480	$ 534,035
C-1C (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Rer	$ 409,293	$ 421,572	$ 434,219	$ 447,246	$ 460,663	$ 474,483	$ 488,717	$ 503,379	$ 518,480	$ 534,035
E.) PROJECT NET CASH FLOW										
Horizontal Infrastructure Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Gap	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ 23,945,542	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Incremen	$ 4,011,127	$ 4,171,153	$ 6,337,138	$ 6,588,045	$ 6,843,970	$ 7,105,013	$ 7,371,278	$ 7,642,867	$ 7,919,889	$ 8,202,451
Condominium CFD Facilities Tax Proceed	$ 155,812	$ 230,404	$ 235,012	$ 239,712	$ 244,506	$ 249,397	$ 254,384	$ 259,472	$ 264,662	$ 269,955
Project Reserve from Sea Level Rise Tax Proceec	$ 1,587,095	$ 1,518,837	$ 1,403,246	$ 502,767	$ (0)	$ 0	$ (0)	$ 0	$ (0)	$ 0
Ground Rent Payments	$ 409,293	$ 421,572	$ 434,219	$ 447,248	$ 460,663	$ 474,483	$ 488,717	$ 503,379	$ 518,480	$ 534,035
Total Project Profi	$ 6,163,127	$ 30,387,508	$ 8,409,615	$ 7,777,770	$ 7,549,139	$ 7,828,893	$ 8,114,379	$ 8,405,718	$ 8,703,031	$ 9,006,440
F.) DISTRIBUTION OF PROFIT										
Master Developer Return on Investmei	$ 3,909,025	$ 3,478,815	$ 6,395,951	$ 7,330,524	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:										
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ -	$ -	$ -	$ -	$ 3,189,814	$ 3,309,484	$ 3,431,548	$ 3,556,053	$ 3,683,048	$ 3,817,582
Port of San Francisco Profit Participation - Annual Ground Rei	$ 409,293	$ 421,572	$ 434,219	$ 447,246	$ 460,663	$ 474,483	$ 488,717	$ 503,379	$ 518,480	$ 534,035
Port of San Francisco Profit Participation - Prepaid Ground Rer	$ -	$ -	$ -	$ -	$ 3,898,662	$ 4,044,925	$ 4,194,114	$ 4,346,287	$ 4,501,503	$ 4,659,823
Total Master Developer Prof	$ 3,909,025	$ 3,478,815	$ 6,395,951	$ 7,330,524	$ 3,189,814	$ 3,309,484	$ 3,431,548	$ 3,556,053	$ 3,683,048	$ 3,812,582
Total Port of San Francisco Profi	$ 409,293	$ 421,572	$ 434,219	$ 447,246	$ 4,359,325	$ 4,519,408	$ 4,682,831	$ 4,849,666	$ 5,019,983	$ 5,193,858
Total Project Profi	$ 4,318,318	$ 3,900,387	$ 6,830,170	$ 7,777,770	$ 7,549,130	$ 7,828,893	$ 8,114,379	$ 8,405,718	$ 8,703,031	$ 9,006,440
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT										
Port Annual Ground Rent (Including Parcel C-1A	$ 409,293	$ 421,572	$ 434,219	$ 447,248	$ 460,663	$ 474,483	$ 488,717	$ 503,379	$ 518,480	$ 534,035
Port Share of Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ 3,898,662	$ 4,044,925	$ 4,194,114	$ 4,346,287	$ 4,501,503	$ 4,659,823
1.5% of Net Proceeds from Refinancing	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,096,688	$ 985,153	$ -	$ -
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium Resale Transfer Fee	$ 1,145,887	$ 1,309,659	$ 1,563,589	$ 1,777,083	$ 2,001,979	$ 2,238,769	$ 2,476,718	$ 2,623,929	$ 2,830,789	$ 2,915,713
Total Port of San Francisco Economic Benef	$ 1,555,180	$ 1,731,231	$ 1,997,808	$ 2,224,328	$ 6,361,303	$ 6,758,177	$ 8,206,237	$ 8,458,748	$ 7,850,772	$ 8,109,571
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION										
Port's 8 Cents of Tax Incremen	$ 1,357,265	$ 1,384,410	$ 2,148,039	$ 2,191,000	$ 2,234,820	$ 2,279,517	$ 2,325,107	$ 2,371,609	$ 2,419,041	$ 2,467,472
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protectior	$ 1,357,265	$ 1,384,410	$ 2,148,039	$ 2,191,000	$ 2,234,820	$ 2,279,517	$ 2,325,107	$ 2,371,609	$ 2,419,041	$ 2,467,422
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION										
Available Sea Level Rise CFD Tax Proceeds	$ 529,032	$ 539,612	$ 798,372	$ 814,339	$ 830,626	$ 847,238	$ 864,183	$ 881,467	$ 899,096	$ 917,078
Available Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Project Reserve Proceeds from Sea Level Rise CFD Tr	$ -	$ -	$ -	$ 928,544	$ 1,459,938	$ 1,489,136	$ 1,518,919	$ 1,549,297	$ 1,580,283	$ 1,611,889
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 529,032	$ 539,612	$ 798,372	$ 1,742,884	$ 2,290,564	$ 2,336,375	$ 2,383,102	$ 2,430,764	$ 2,479,380	$ 2,528,967

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2039 YEAR 29	2040 YEAR 30	2041 YEAR 31	2042 YEAR 32	2043 YEAR 33	2044 YEAR 34	2045 YEAR 35	2046 YEAR 36	2047 YEAR 37
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES									
Upfront Project Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES									
CFD/IFD Bonds - Debt Service Paid by Tax Incremen									
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Projec	$ 8,490,664	$ 8,784,641	$ 9,084,498	$ 9,390,352	$ 9,247,744	$ 9,311,913	$ 9,033,333	$ 9,320,109	$ 9,612,621
Condominium CFD Facilities Tax Proceed	$ 275,354	$ 280,861	$ 286,478	$ 292,208	$ 298,052	$ 304,013	$ 310,093	$ 316,295	$ 322,621
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ (0)	$ 0	$ (0)	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ 8,766,018	$ 9,065,502	$ 9,370,976	$ 9,682,560	$ 9,545,796	$ 9,615,926	$ 9,343,426	$ 9,636,404	$ 9,935,242
C.) MASTER DEVELOPER PEAK EQUITY (b)									
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914
D.) PREPAID AND ANNUAL GROUND REN									
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ 550,056	$ 566,557	$ 583,554	$ 601,061	$ 619,092	$ 637,665	$ 656,795	$ 676,499	$ 696,794
C-1C (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Rer	$ 550,056	$ 566,557	$ 583,554	$ 601,061	$ 619,092	$ 637,665	$ 656,795	$ 676,499	$ 696,794
E.) PROJECT NET CASH FLOW									
Horizontal Infrastructure Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Gap	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Incremen	$ 8,490,664	$ 8,784,641	$ 9,084,498	$ 9,390,352	$ 9,247,744	$ 9,311,913	$ 9,033,333	$ 9,320,109	$ 9,612,621
Condominium CFD Facilities Tax Proceed	$ 275,354	$ 280,861	$ 286,478	$ 292,208	$ 298,052	$ 304,013	$ 310,093	$ 316,295	$ 322,621
Project Reserve from Sea Level Rise Tax Proceec	$ (0)	$ 0	$ (0)	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ 550,056	$ 566,557	$ 583,554	$ 601,061	$ 619,092	$ 637,665	$ 656,795	$ 676,499	$ 696,794
Total Project Profi	$ 9,316,073	$ 9,632,059	$ 9,954,530	$ 10,283,620	$ 10,164,888	$ 10,253,591	$ 10,000,221	$ 10,312,903	$ 10,632,036
F.) DISTRIBUTION OF PROFIT									
Master Developer Return on Investmei	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:									
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ 3,944,708	$ 4,079,476	$ 4,216,939	$ 4,357,152	$ 4,295,608	$ 4,327,167	$ 4,204,542	$ 4,336,382	$ 4,470,859
Port of San Francisco Profit Participation - Annual Ground Rei	$ 550,056	$ 566,557	$ 583,554	$ 601,061	$ 619,092	$ 637,605	$ 656,795	$ 676,499	$ 696,794
Port of San Francisco Profit Participation - Prepaid Ground Rer	$ 4,821,310	$ 4,986,026	$ 5,154,037	$ 5,325,408	$ 5,250,188	$ 5,288,759	$ 5,138,884	$ 5,300,022	$ 5,464,383
Total Master Developer Prof	$ 3,944,708	$ 4,079,476	$ 4,216,930	$ 4,357,152	$ 4,295,608	$ 4,327,167	$ 4,204,542	$ 4,336,382	$ 4,470,859
Total Port of San Francisco Profi	$ 5,371,365	$ 5,552,583	$ 5,737,591	$ 5,926,469	$ 5,869,280	$ 5,926,424	$ 5,795,680	$ 5,976,521	$ 6,161,177
Total Project Profi	$ 9,316,073	$ 9,632,058	$ 9,954,530	$ 10,283,620	$ 10,164,888	$ 10,253,591	$ 10,000,221	$ 10,312,903	$ 10,632,036
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT									
Port Annual Ground Rent (Including Parcel C-1A	$ 550,056	$ 566,557	$ 583,554	$ 601,061	$ 619,092	$ 637,665	$ 656,795	$ 676,499	$ 696,794
Port Share of Prepaid Ground Ren	$ 4,821,310	$ 4,986,026	$ 5,154,037	$ 5,325,408	$ 5,250,188	$ 5,288,758	$ 5,138,884	$ 5,300,022	$ 5,464,383
1.5% of Net Proceeds from Refinancing	$ 2,521,244	$ 485,078	$ -	$ 3,038,208	$ -	$ -	$ -	$ -	$ -
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium Resale Transfer Fee	$ 3,003,184	$ 3,090,280	$ 3,186,078	$ 3,281,661	$ 3,380,111	$ 3,481,514	$ 3,585,959	$ 3,693,538	$ 3,804,344
Total Port of San Francisco Economic Benef	$ 10,895,794	$ 9,130,942	$ 8,923,669	$ 12,246,337	$ 9,249,391	$ 9,407,938	$ 9,381,639	$ 9,670,059	$ 9,965,521
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION									
Port's 8 Cents of Tax Incremen	$ 2,516,771	$ 2,567,106	$ 2,618,448	$ 2,670,817	$ 2,724,233	$ 2,778,718	$ 2,834,292	$ 2,890,978	$ 2,948,798
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protectior	$ 2,516,771	$ 2,567,106	$ 2,618,448	$ 2,670,817	$ 2,724,233	$ 2,778,718	$ 2,834,292	$ 2,890,978	$ 2,948,798
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION									
Available Sea Level Rise CFD Tax Proceeds	$ 935,420	$ 954,128	$ 973,211	$ 992,675	$ 1,012,529	$ 1,032,779	$ 1,053,435	$ 1,074,503	$ 1,095,993
Available Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Project Reserve Proceeds from Sea Level Rise CFD Tr	$ 1,644,127	$ 1,677,009	$ 1,710,550	$ 1,744,761	$ 1,779,656	$ 1,815,249	$ 1,851,554	$ 1,888,585	$ 1,926,357
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 2,579,547	$ 2,631,138	$ 2,683,760	$ 2,737,436	$ 2,792,184	$ 2,848,028	$ 2,904,989	$ 2,963,088	$ 3,022,350

Notes:

*** *All numbers are preliminary estimates and subject to further change.* **

(a) Numerical estimates are expressed in nominal terms unless otherwi denoted.

(b) Estimated peak equity assuming development of each phase (stand-alone basis.

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2048 YEAR 38	2049 YEAR 39	2050 YEAR 40	2051 YEAR 41	2052 YEAR 42	2053 YEAR 43	2054 YEAR 44	2055 YEAR 45	2056 YEAR 46
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES									
Upfront Project Entitlement Expenditure	-	-	-	-	-	-	-	-	-
Phase I Infrastructure	-	-	-	-	-	-	-	-	-
Phase II Infrastructure	-	-	-	-	-	-	-	-	-
Phase III Infrastructure	-	-	-	-	-	-	-	-	-
Total Horizontal Infrastructure Uses	-	-	-	-	-	-	-	-	-
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES									
CFD/IFD Bonds - Debt Service Paid by Tax Incremen									
Phase I CFD/IFD Bonds	-	-	-	-	-	-	-	-	-
Phase II CFD/IFD Bonds	-	-	-	-	-	-	-	-	-
Phase III CFD/IFD Bonds	-	-	-	-	-	-	-	-	-
Total CFD/IFD Bonds - Debt Service Paid by Tax Increme	-	-	-	-	-	-	-	-	-
Pay Go Tax Increment Applied to Projec	9,114,433	9,301,209	8 995,267	-	-	-	-	-	-
Condominium CFD Facilities Tax Proceed	329,073	335,655	-	-	-	-	-	-	-
Project Reserve Proceeds from Sea Level Rise CFD Ta	-	-	-	-	-	-	-	-	-
Total Horizontal Infrastructure Investment Source	9,443,506	9,636,954	8 995,267	-	-	-	-	-	-
C.) MASTER DEVELOPER PEAK EQUITY (b)									
Phase I	-	-	-	-	-	-	-	-	-
Phase II	-	-	-	-	-	-	-	-	-
Phase III	19 183,297	10,745,247	1,641,624	-	-	-	-	-	-
D.) PREPAID AND ANNUAL GROUND REN									
A-1 (Office)	-	-	-	-	-	-	-	-	-
KN (Resi)	-	-	-	-	-	-	-	-	-
E2 (Resi)	-	-	-	-	-	-	-	-	-
C-2B (Resi)	-	-	-	-	-	-	-	-	-
2 (Resi)	-	-	-	-	-	-	-	-	-
D-1 (Resi)	-	-	-	-	-	-	-	-	-
F-G (Office)	-	-	-	-	-	-	-	-	-
E1 (Resi)	-	-	-	-	-	-	-	-	-
E3 (Resi)	-	-	-	-	-	-	-	-	-
B-1 - B-2 (Office)	-	-	-	-	-	-	-	-	-
C-1A (Office)	717,698	739,229	761,406	784,248	807,775	832,008	856,969	882,678	909,158
C-1C (Resi)	-	-	-	-	-	-	-	-	-
H-1 (Resi)	-	-	-	-	-	-	-	-	-
H-2 (Resi)	-	-	-	-	-	-	-	-	-
Total Prepaid and Annual Ground Rer	717,698	739,229	761,406	784,248	807,775	832,008	856 969	882,678	909,158
E.) PROJECT NET CASH FLOW									
Horizontal Infrastructure Costs	-	-	-	-	-	-	-	-	-
Buildings 12 and 21 Feasibility Gap	-	-	-	-	-	-	-	-	-
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	-	-	-	-	-	-	-	-	-
Pay Go Tax Incremen	9,114,433	9 301,299	8,995,267	-	-	-	-	-	-
Condominium CFD Facilities Tax Proceed	329,073	335,655	-	-	-	-	-	-	-
Project Reserve from Sea Level Rise Tax Proceec	-	-	-	-	-	-	-	-	-
Ground Rent Payments	717,698	739,279	761,406	784,248	807,775	832,008	856,969	882,678	909,158
Total Project Profit	10,161 204	10,376,182	9,756 672	784,248	807,775	832,008	856,969	882,678	909,158
F.) DISTRIBUTION OF PROFIT									
Master Developer Return on Investmer	-	-	-	-	-	-	-	-	-
Profit Sharing:									
Master Developer Profit Participation - Prepaid Annual Ground Re	-	-	-	-	-	-	-	-	-
Master Developer Profit Participation - Prepaid Ground Re	4,249 578	4 338,629	4,047,870	-	-	-	-	-	-
Port of San Francisco Profit Participation - Annual Ground Rer	717,698	739,229	761,406	784,248	807,775	832,008	856,969	882,678	909,158
Port of San Francisco Profit Participation - Prepaid Ground Rer	5,193,929	5,300,324	4,947,397	-	-	-	-	-	-
Total Master Developer Prof	4,249,578	4,336,629	4,047,870	-	-	-	-	-	-
Total Port of San Francisco Profi	5,911,626	6,039,553	5,708 802	784 248	807,775	832,008	856,969	882,678	909,158
Total Project Profi	10,161,204	10,376,182	9,756,672	784 248	807,775	832,008	856 969	882,678	909,158
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT									
Port Annual Ground Rent (including Parcel C-1A	717,698	739,279	761,406	784,248	807,775	832,008	856,969	882 678	909,158
Port Share of Prepaid Ground Ren	5,193,929	5,300,324	4,947,397	-	-	-	-	-	-
1.5% of Net Proceeds from Refinancing:	-	-	1,708,604	1,534,836	-	-	3,928,016	755,736	-
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	-	541,735	1,228,414	1,265,267	1,303 225	2,911,918	3,319,546	3,419,132	5 437,238
Condominium Resale Transfer Fee	3,918,474	4,036 029	4,157,110	4,281,823	4,410 278	4,542,586	4,678,863	4 819,229	4 963,806
Total Port of San Francisco Economic Benef	9,830,101	10,617,317	12,802,930	7,866,173	6,521,277	8,286,513	12,783,395	9,876,776	11,310,202
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION									
Port's 8 Cents of Tax Incremen	3,007,774	3,067,929	3,129,288	3,191,874	3,255,711	3,320,825	3,387,242	3,454,987	3,524,086
Unused Tax Increment to Port after Project is Complet	-	-	591,892	8,642,809	12,244,696	16,198 463	13 476 969	16 107,142	21,683,181
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protectior	3,007,774	3,067,929	3 721,179	11,834,682	15 500,407	19,519 288	16,864 211	19 562,129	25,207,268
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION									
Available Sea Level Rise CFD Tax Proceed	1,117,913	1,140 272	1,163,077	1,186,339	1,210,085	1,234,267	1,258,952	1 284,131	1,309 814
Available Condominium CFD Facilities Tax Proceed	-	-	-	1,952,808	2,483,680	3,560,485	3,631,895	3,704,329	4,902,236
Unused Project Reserve Proceeds from Sea Level Rise CFD Tr	1,964,884	2,004 181	2,044,265	2,085,150	2,126,853	2,169,390	2,212,778	2,257,034	2 302,174
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	-	-	342,368	243 409	221,630	170 410	173,818	177 295	119,850
Total CFD Tax Revenues for City Shoreline Protectio	3,082,797	3 144,453	3,549,710	5 467,706	6,042,210	7,134,552	7,277,243	7,422,788	8,634 174

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2057 YEAR 47	2058 YEAR 48	2059 YEAR 49	2060 YEAR 50	2061 YEAR 51	2062 YEAR 52	2063 YEAR 53	2064 YEAR 54	2065 YEAR 55	2066 YEAR 56
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES										
Upfront Project Entitlement Expenditure	-	-	-	-	-	-	-	-	-	-
Phase I Infrastructure	-	-	-	-	-	-	-	-	-	-
Phase II Infrastructure	-	-	-	-	-	-	-	-	-	-
Phase III Infrastructure	-	-	-	-	-	-	-	-	-	-
Total Horizontal Infrastructure Uses	-	-	-	-	-	-	-	-	-	-
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES										
CFD/IFD Bonds - Debt Service Paid by Tax Incremen										
Phase I CFD/IFD Bonds	-	-	-	-	-	-	-	-	-	-
Phase II CFD/IFD Bonds	-	-	-	-	-	-	-	-	-	-
Phase III CFD/IFD Bonds	-	-	-	-	-	-	-	-	-	-
Total CFD/IFD Bonds - Debt Service Paid by Tax Increme	-	-	-	-	-	-	-	-	-	-
Pay Go Tax Increment Applied to Projec	-	-	-	-	-	-	-	-	-	-
Condominium CFD Facilities Tax Proceed	-	-	-	-	-	-	-	-	-	-
Project Reserve Proceeds from Sea Level Rise CFD Ta	-	-	-	-	-	-	-	-	-	-
Total Horizontal Infrastructure Investment Source	-	-	-	-	-	-	-	-	-	-
C.) MASTER DEVELOPER PEAK EQUITY (b)										
Phase I	-	-	-	-	-	-	-	-	-	-
Phase II	-	-	-	-	-	-	-	-	-	-
Phase III	-	-	-	-	-	-	-	-	-	-
D.) PREPAID AND ANNUAL GROUND REN										
A-1 (Office)	-	-	-	-	-	-	-	-	-	-
KN (Resi)	-	-	-	-	-	-	-	-	-	-
E2 (Resi)	-	-	-	-	-	-	-	-	-	-
C-2B (Resi)	-	-	-	-	-	-	-	-	-	-
2 (Resi)	-	-	-	-	-	-	-	-	-	-
D-1 (Resi)	-	-	-	-	-	-	-	-	-	-
F-G (Office)	-	-	-	-	-	-	-	-	-	-
E1 (Resi)	-	-	-	-	-	-	-	-	-	-
E3 (Resi)	-	-	-	-	-	-	-	-	-	-
B-1 - B-2 (Office)	-	-	-	-	-	-	-	-	-	-
C-1A (Office)	936 433	964,526	993,462	1,023,265	1,053,963	1,085,582	1 118,150	1,151,694	1,186,245	1 221,832
C-1C (Resi)	-	-	-	-	-	-	-	-	-	-
H-1 (Resi)	-	-	-	-	-	-	-	-	-	-
H-2 (Resi)	-	-	-	-	-	-	-	-	-	-
Total Prepaid and Annual Ground Rer	936,433	964 526	993,462	1,023,265	1,053,963	1 085,582	1,118,150	1,151,694	1,186 245	1,221,832
E.) PROJECT NET CASH FLOW										
Horizontal Infrastructure Costs	-	-	-	-	-	-	-	-	-	-
Buildings 12 and 21 Feasibility Gap	-	-	-	-	-	-	-	-	-	-
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	-	-	-	-	-	-	-	-	-	-
Pay Go Tax Incremen	-	-	-	-	-	-	-	-	-	-
Condominium CFD Facilities Tax Proceed	-	-	-	-	-	-	-	-	-	-
Project Reserve from Sea Level Rise Tax Proceec	-	-	-	-	-	-	-	-	-	-
Ground Rent Payments	936,433	964,526	993,462	1,023,265	1,053,963	1,085,582	1,118,150	1,151,694	1,186,245	1,221,832
Total Project Profit	936 433	964 526	993,462	1,023 265	1,053,963	1,085,582	1,118,150	1,151,694	1,186,245	1,221,832
F.) DISTRIBUTION OF PROFIT										
Master Developer Return on Investmer	-	-	-	-	-	-	-	-	-	-
Profit Sharing:										
Master Developer Profit Participation - Prepaid Annual Ground Re	-	-	-	-	-	-	-	-	-	-
Master Developer Profit Participation - Prepaid Ground Re	-	-	-	-	-	-	-	-	-	-
Port of San Francisco Profit Participation - Annual Ground Rer	936,433	964,526	993,462	1,023,265	1,053,963	1,085,582	1,118,150	1,151,694	1,186,245	1 221,832
Port of San Francisco Profit Participation - Prepaid Ground Rer	-	-	-	-	-	-	-	-	-	-
Total Master Developer Prof	-	-	-	-	-	-	-	-	-	-
Total Port of San Francisco Profi	936 433	964,526	993,462	1,023,265	1,053,963	1,085,582	1,118,150	1,151,694	1,186 245	1,221.832
Total Project Profi	936 433	964 526	993,462	1,023,265	1,053 963	1,085,582	1,118,150	1,151,694	1,186,245	1,221 832
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT										
Port Annual Ground Rent (including Parcel C-1A	936,433	964 526	993,462	1 023,265	1,053 963	1 085,582	1,118,150	1,151,694	1,186,245	1,221 832
Port Share of Prepaid Ground Ren	-	-	-	-	-	-	-	-	-	-
1.5% of Net Proceeds from Refinancing:	4,733,429	-	-	-	-	-	-	-	2,661,949	2,391,225
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	5,600,355	5,768,368	5,941,417	6 119,659	6,303,249	6,492,348	6,687,117	6,887,730	7,004,362	7,307,193
Condominium Resale Transfer Fee	5,112,720	5,266,102	5 424 085	5,586 808	5,754,412	5,927,044	6,104,856	6,288 001	6 476 641	6 670,941
Total Port of San Francisco Economic Benef	16 382,937	11,998,993	12,358,963	12,729,732	13,111,624	13 504,973	13,910 122	14,327 426	17,419,197	17,591,190
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION										
Port's 8 Cents of Tax Incremen	3,594,568	3 666,459	3,739,789	3,814,584	3,890 876	3,968,694	4,048 068	4,129,029	4,211,609	4 295,842
Unused Tax Increment to Port after Project is Complet	20,101,296	21,661,234	28,998,053	25,637,114	29,924,381	28,276,942	28 842,481	29,419 331	30 007,717	30,607,872
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protectior	23,695 864	25,327,693	32,737,841	29,451,698	33,815,257	32,245,636	32,890,549	33,548,360	34 219,327	34,903,713
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION										
Available Sea Level Rise CFD Tax Proceed	1,336,010	1,362,730	1,389,985	1 417,784	1,446 140	1,475 063	1,504,564	1,534,655	1,565,349	1,596,656
Available Condominium CFD Facilities Tax Proceed	5,000,280	5,100,286	7,551,638	7,702,671	7,856,725	8,013,859	8,174,136	8,337,619	8,504,371	8,674 459
Unused Project Reserve Proceeds from Sea Level Rise CFD Tr	2,348 218	2,395,182	2,443,086	2,491,948	2,541,787	2,592,622	2,644,475	2,697,384	2,751,312	2 806 338
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	122,349	124,796	-	-	-	-	-	-	-	-
Total CFD Tax Revenues for City Shoreline Protectio	8,806,857	8,982,984	11,384,709	11,812,403	11,844,651	12,081,544	12,323,175	12 569,638	12,821,032	13,077,452

Notes:

*** *All numbers are preliminary estimates and subject to further change* ***

(a) Numerical estimates are expressed in nominal terms unless otherwis denoted.

(b) Estimated peak equity assuming development of each phase on stand-alone basis.

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2067 YEAR 57	2068 YEAR 58	2069 YEAR 59	2070 YEAR 60	2071 YEAR 61	2072 YEAR 62	2073 YEAR 63	2074 YEAR 64	2075 YEAR 65	2076 YEAR 66	2077 YEAR 67	2078 YEAR 68	2079 YEAR 69	2080 YEAR 70	2081 YEAR 71	2082 YEAR 72	2083 YEAR 73	2084 YEAR 74	2085 YEAR 75
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Project Endowment Expenditure	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Phase I Infrastructure	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Phase II Infrastructure	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Phase III Infrastructure	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Horizontal Infrastructure Uses	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Incremen																			
Phase I CFD/IFD Bonds	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Phase II CFD/IFD Bonds	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Phase III CFD/IFD Bonds	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total CFD/IFD Bonds - Debt Service Paid by Tax Incremer	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pay Go Tax Increment Applied to Projec	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Condominium CFD Facilities Tax Proceed	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Project Reserve Proceeds from Sea Level Rise CFD Ta	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Horizontal Infrastructure Investment Source	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Phase II	-	-	-	-	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Phase III	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
D.) PREPAID AND ANNUAL GROUND REN																			
A-1 (Office)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
KN (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
E2 (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
C-2B (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2 (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
D-1 (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
F-G (Office)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
E1 (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
E3 (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
B-1 - B-2 (Office)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
C-1A (Office)	1,258,487	1,296,242	1,335,129	1,375,183	1,416,439	1,458,932	1,502,700	1,547,781	1,594,214	1,642,041	1,691,302	1,742,041	1,794,302	1,848,131	1,903,575	1,960,682	2,019,503	2,080,088	2,142,491
C-1C (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
H-1 (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
H-2 (Resi)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Prepaid and Annual Ground Rer	1,258,487	1,296,242	1,335,129	1,375,183	1,416,439	1,458,932	1,502,700	1,547,781	1,594,214	1,642,041	1,691,302	1,742,041	1,794,302	1,848,131	1,903,575	1,960,682	2,019,503	2,080,088	2,142,491
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Buildings 12 and 21 Feasibility Gap	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pay Go Tax Incremen	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Condominium CFD Facilities Tax Proceed	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Project Reserve from Sea Level Rise Tax Proceec	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ground Rent Payments	1,258,487	1,296,242	1,335,129	1,375,183	1,416,439	1,458,932	1,502,700	1,547,781	1,594,214	1,642,041	1,691,302	1,742,041	1,794,302	1,848,131	1,903,575	1,960,682	2,019,503	2,080,088	2,142,491
Total Project Profi	1,258,487	1,296,242	1,335,129	1,375,183	1,416,439	1,458,932	1,502,700	1,547,781	1,594,214	1,642,041	1,691,302	1,742,041	1,794,302	1,848,131	1,903,575	1,960,682	2,019,503	2,080,088	2,142,491
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investmer	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Profit Sharing:																			
Master Developer Profit Participation - Prepaid Annual Ground Re	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Master Developer Profit Participation - Prepaid Ground Re	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Port of San Francisco Profit Participation - Annual Ground Rer	1,258,487	1,296,242	1,335,129	1,375,183	1,416,439	1,458,932	1,502,700	1,547,781	1,594,214	1,642,041	1,691,302	1,742,041	1,794,302	1,848,131	1,903,575	1,960,682	2,019,503	2,080,088	2,142,491
Port of San Francisco Profit Participation - Prepaid Ground Rer	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Master Developer Prof	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Port of San Francisco Profi	1,258,487	1,296,242	1,335,129	1,375,183	1,416,439	1,458,932	1,502,700	1,547,781	1,594,214	1,642,041	1,691,302	1,742,041	1,794,302	1,848,131	1,903,575	1,960,682	2,019,503	2,080,088	2,142,491
Total Project Profi	1,258,487	1,296,242	1,335,129	1,375,183	1,416,439	1,458,932	1,502,700	1,547,781	1,594,214	1,642,041	1,691,302	1,742,041	1,794,302	1,848,131	1,903,575	1,960,682	2,019,503	2,080,088	2,142,491
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT																			
Port Annual Ground Rent (including Parcel C-1A	1,258,487	1,296,242	1,335,129	1,375,183	1,416,439	1,458,932	1,502,700	1,547,781	1,594,214	1,642,041	1,691,302	1,742,041	1,794,302	1,848,131	1,903,575	1,960,682	2,019,503	2,080,088	2,142,491
Port Share of Prepaid Ground Ren	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1.5% of Net Proceeds from Refinancing	-	-	8,119,722	1,177,413	-	7,374,528	-	-	-	-	-	-	-	4,147,230	3,725,450	-	-	9,534,327	1,834,371
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	7,526,409	7,752,201	7,984,767	8,224,310	8,471,030	8,725,171	8,986,926	9,256,533	9,534,229	9,820,256	10,114,864	10,418,310	11,607,481	13,040,574	13,431,791	13,834,745	16,789,670	17,811,613	18,345,962
Condominium Resale Transfer Fee	6,871,069	7,077,201	7,289,517	7,508,202	7,733,448	7,965,452	8,204,415	8,450,548	8,704,064	8,965,186	9,234,142	9,511,166	9,796,501	10,090,396	10,393,108	10,704,901	11,026,048	11,356,830	11,697,535
Total Port of San Francisco Economic Benef	15,655,965	16,125,944	22,729,135	18,285,108	17,620,926	25,524,082	18,694,041	19,254,862	19,832,508	20,427,483	21,040,308	21,671,517	23,198,284	29,126,331	29,453,924	26,500,329	29,835,221	40,782,858	34,020,357
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES ANC CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	4,381,758	3,974,605	3,623,853	2,923,097	2,981,558	3,041,190	1,861,475	1,724,449	1,758,938	-	-	-	-	-	-	-	-	-	-
Unused Tax Increment to Port after Project is Complet	31,220,029	28,319,059	25,819,955	20,827,063	21,243,604	21,668,476	13,263,011	12,286,699	12,532,433	-	-	-	-	-	-	-	-	-	-
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protectior	35,601,788	32,293,664	29,443,808	23,750,160	24,225,163	24,709,666	15,124,486	14,011,148	14,291,371	-	-	-	-	-	-	-	-	-	-
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceed	1,628,589	1,661,160	1,694,384	1,728,271	1,762,837	1,798,093	1,834,055	1,870,736	1,908,151	1,946,314	1,985,240	2,024,945	2,065,444	2,106,753	2,148,888	2,191,866	2,235,703	2,280,417	2,326,026
Available Condominium CFD Facilities Tax Proceed	8,847,948	9,024,907	9,205,405	9,389,513	9,577,304	9,768,850	9,964,227	10,163,511	10,366,781	10,574,117	10,785,599	11,001,311	11,221,338	11,445,764	11,674,680	11,908,173	12,146,337	12,389,263	12,637,049
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	2,862,465	2,919,714	2,978,108	3,037,670	3,098,424	3,160,392	3,223,600	3,288,072	3,353,833	3,420,910	3,489,328	3,559,115	3,630,297	3,702,903	3,776,961	3,852,500	3,929,550	4,008,141	4,088,304
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total CFD Tax Revenues for City Shoreline Protectio	13,339,001	13,605,781	13,877,897	14,155,455	14,438,564	14,727,335	15,021,882	15,322,320	15,628,766	15,941,341	16,260,168	16,585,371	16,917,079	17,255,420	17,600,579	17,952,539	18,311,590	18,677,822	19,051,378

Notes:

*** *All numbers are preliminary estimates and subject to further change* **

(a) Numerical estimates are expressed in nominal terms unless otherwi denoted.

(b) Estimated peak equity assuming development of each phase c stand-alone basis

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2086 YEAR 76	2087 YEAR 77	2088 YEAR 78	2089 YEAR 79	2090 YEAR 80	2091 YEAR 81	2092 YEAR 82	2093 YEAR 83	2094 YEAR 84	2095 YEAR 85	2096 YEAR 86	2097 YEAR 87	2098 YEAR 88	2099 YEAR 89	2100 YEAR 90	2101 YEAR 91	2102 YEAR 92	2103 YEAR 93	2104 YEAR 94
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Project Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Incremen																			
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Projec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D.) PREPAID AND ANNUAL GROUND REN'																			
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ 2,206,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
C-1C (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Rer	$ 2,206,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Ga|	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve from Sea Level Rise Tax Proceec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ 2,206,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
Total Project Profi	$ 2,206,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investmer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:																			
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Annual Ground Rer	$ 2,206,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
Port of San Francisco Profit Participation - Prepaid Ground Rer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Master Developer Prof	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Port of San Francisco Profi	$ 2,206,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
Total Project Profi	$ 2,206,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT																			
Port Annual Ground Rent (Including Parcel C-1A	$ 2,206,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
Port Share of Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% of Net Proceeds from Refinancing	$ -	$ 11,489,274	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 6,461,249	$ 5,804,130	$ -	$ -	$ 14,854,171	$ 2,857,890	$ -	$ 17,899,914	$ -	$ -
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	$ 21,996,006	$ 22,655,886	$ 23,335,562	$ 24,035,629	$ 24,756,698	$ 25,499,399	$ 26,264,381	$ 27,052,312	$ 27,863,882	$ 28,699,798	$ 29,560,792	$ 30,447,616	$ 31,361,044	$ 32,301,876	$ 33,270,932	$ 34,269,060	$ 35,297,132	$ 36,356,046	$ 37,446,727
Condominium Resale Transfer Fee	$ 12,048,461	$ 12,409,914	$ 12,782,212	$ 13,165,678	$ 13,560,649	$ 13,967,468	$ 14,386,492	$ 14,818,087	$ 15,262,629	$ 15,720,508	$ 16,192,124	$ 16,677,887	$ 17,178,224	$ 17,693,571	$ 18,224,378	$ 18,771,100	$ 19,334,242	$ 19,914,270	$ 20,511,698
Total Port of San Francisco Economic Benef	$ 36,251,231	$ 48,828,042	$ 38,458,931	$ 39,612,699	$ 40,801,080	$ 42,025,113	$ 43,285,866	$ 44,584,442	$ 45,921,975	$ 53,760,883	$ 54,522,753	$ 50,180,182	$ 51,685,588	$ 68,090,326	$ 57,831,130	$ 56,478,237	$ 76,072,499	$ 59,917,762	$ 61,715,295
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protectior	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceed	$ 2,372,546	$ 2,419,997	$ 2,468,397	$ 2,517,765	$ 2,568,120	$ 2,619,483	$ 2,671,872	$ 2,725,310	$ 2,779,816	$ 2,835,412	$ 2,892,120	$ 2,949,963	$ 3,008,962	$ 3,069,141	$ 3,130,524	$ 3,193,135	$ 3,256,997	$ 3,322,137	$ 3,388,580
Available Condominium CFD Facilities Tax Proceed	$ 12,889,790	$ 13,147,585	$ 13,410,537	$ 13,678,748	$ 13,952,323	$ 14,231,369	$ 14,515,997	$ 14,806,317	$ 15,102,443	$ 15,404,492	$ 15,712,582	$ 16,026,833	$ 16,347,370	$ 16,674,317	$ 17,007,804	$ 17,347,960	$ 17,694,919	$ 18,048,817	$ 18,409,794
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 4,170,070	$ 4,253,472	$ 4,338,541	$ 4,425,312	$ 4,513,818	$ 4,604,095	$ 4,696,176	$ 4,790,100	$ 4,885,902	$ 4,983,620	$ 5,083,292	$ 5,184,958	$ 5,288,657	$ 5,394,431	$ 5,502,319	$ 5,612,366	$ 5,724,613	$ 5,839,105	$ 5,956,887
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 19,432,406	$ 19,821,054	$ 20,217,475	$ 20,621,825	$ 21,034,261	$ 21,454,946	$ 21,884,045	$ 22,321,726	$ 22,768,161	$ 23,223,524	$ 23,687,995	$ 24,161,754	$ 24,644,990	$ 25,137,889	$ 25,640,647	$ 26,153,460	$ 26,676,529	$ 27,210,060	$ 27,754,261

Notes:

*** *All numbers are preliminary estimates and subject to further change.* **

(a) Numerical estimates are expressed in nominal terms unless otherwi denoted.

(b) Estimated peak equity assuming development of each phase (stand-alone basis

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2105 YEAR 95	2106 YEAR 96	2107 YEAR 97	2108 YEAR 98	2109 YEAR 99	2110 YEAR 100	2111 YEAR 101	2112 YEAR 102	2113 YEAR 103	2114 YEAR 104	2115 YEAR 105	2116 YEAR 106	2117 YEAR 107	2118 YEAR 108	2119 YEAR 109	2120 YEAR 110	2121 YEAR 111	2122 YEAR 112	2123 YEAR 113
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Project Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Incremen																			
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Incremei	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Projec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D.) PREPAID AND ANNUAL GROUND REN																			
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
C-1C (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Rer	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Gaj	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve from Sea Level Rise Tax Proceec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
Total Project Profi	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investmer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:																			
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Annual Ground Rer	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
Port of San Francisco Profit Participation - Prepaid Ground Rer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Master Developer Prof	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Port of San Francisco Profi	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
Total Project Profi	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT																			
Port Annual Ground Rent (Including Parcel C-1A	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
Port Share of Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% of Net Proceeds from Refinancing	$ -	$ -	$ -	$ -	$ -	$ 10,066,415	$ 9,042,845	$ -	$ -	$ 23,142,314	$ 4,452,499	$ -	$ 27,887,483	$ -	$ -	$ -	$ -	$ -	$ -
1.5% (Yrs 30-59) & 2.5% (Yrs 60-69) of Modified Gross Revenue	$ 38,570,129	$ 39,727,233	$ 40,919,050	$ 42,146,621	$ 43,411,020	$ 44,713,350	$ 46,054,751	$ 47,436,393	$ 48,859,485	$ 50,325,270	$ 51,835,028	$ 53,390,079	$ 54,991,781	$ 56,641,534	$ 51,191,849	$ 43,880,396	$ 45,196,808	$ 46,552,713	$ 27,236,311
Condominium Resale Transfer Fee	$ 21,127,049	$ 21,760,860	$ 22,413,686	$ 23,086,096	$ 23,778,679	$ 24,492,040	$ 25,226,801	$ 25,983,605	$ 26,763,113	$ 27,566,006	$ 28,392,987	$ 29,244,776	$ 30,122,120	$ 31,025,783	$ 31,956,557	$ 32,915,253	$ 33,902,711	$ 34,919,792	$ 35,967,386
Total Port of San Francisco Economic Benef	$ 63,566,754	$ 65,473,756	$ 67,437,969	$ 69,461,108	$ 71,544,941	$ 83,757,704	$ 84,944,073	$ 78,179,089	$ 80,524,462	$ 106,082,510	$ 89,880,900	$ 87,991,254	$ 118,518,474	$ 93,349,921	$ 89,001,487	$ 82,874,324	$ 85,309,053	$ 87,868,325	$ 69,791,392
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES ANC CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protectior	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceeds	$ 3,456,352	$ 3,525,479	$ 3,595,988	$ 3,667,908	$ 3,741,266	$ 3,816,092	$ 3,892,413	$ 3,970,262	$ 4,049,667	$ 4,130,660	$ 4,213,273	$ 4,297,539	$ 4,383,490	$ 4,471,159	$ 4,560,583	$ 4,651,794	$ 4,744,830	$ 4,839,727	$ 4,936,521
Available Condominium CFD Facilities Tax Proceed	$ 18,777,990	$ 19,153,549	$ 19,536,620	$ 19,927,353	$ 20,325,900	$ 20,732,418	$ 21,147,066	$ 21,570,007	$ 22,001,408	$ 22,441,436	$ 22,890,264	$ 23,348,070	$ 23,815,031	$ 24,291,332	$ 24,777,158	$ 25,272,702	$ 25,778,156	$ 26,293,719	$ 26,819,593
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 6,075,006	$ 6,196,505	$ 6,320,435	$ 6,446,844	$ 6,575,781	$ 6,707,296	$ 6,841,442	$ 6,978,271	$ 7,117,837	$ 7,260,193	$ 7,405,397	$ 7,553,505	$ 7,704,575	$ 7,858,667	$ 8,015,840	$ 8,176,157	$ 8,339,680	$ 8,506,474	$ 8,676,603
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 28,309,348	$ 28,875,533	$ 29,453,044	$ 30,042,105	$ 30,642,947	$ 31,256,806	$ 31,880,922	$ 32,518,540	$ 33,168,911	$ 33,832,289	$ 34,508,935	$ 35,199,114	$ 35,903,096	$ 36,621,158	$ 37,353,581	$ 38,100,653	$ 38,862,668	$ 39,639,919	$ 40,432,718

Notes:

"" All numbers are preliminary estimates and subject to further change. ""

(a) Numerical estimates are expressed in nominal terms unless otherwa denoted.

(b) Estimated peak equity assuming development of each phase « stand-alone basis

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2124 YEAR 114	2125 YEAR 115	2126 YEAR 116	2127 YEAR 117	2128 YEAR 118	2129 YEAR 119	2130 YEAR 120	2131 YEAR 121	2132 YEAR 122	2133 YEAR 123	2134 YEAR 124	2135 YEAR 125
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES												
Upfront Project Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES												
CFD/IFD Bonds - Debt Service Paid by Tax Incremen												
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Projec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C.) MASTER DEVELOPER PEAK EQUITY (b)												
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D.) PREPAID AND ANNUAL GROUND REN												
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1C (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Rer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E.) PROJECT NET CASH FLOW												
Horizontal Infrastructure Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Gap	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve from Sea Level Rise Tax Proceec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Project Profi	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F.) DISTRIBUTION OF PROFIT												
Master Developer Return on Investmer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:												
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Annual Ground Rer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Prepaid Ground Rer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Master Developer Prof	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Port of San Francisco Profi	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Project Profi	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT												
Port Annual Ground Rent (Including Parcel C-1A	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port Share of Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% of Net Proceeds from Refinancings	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	$ 23,826,998	$ 24,541,806	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium Resale Transfer Fee	$ 37,046,408	$ 38,157,800	$ 39,302,534	$ 40,481,610	$ 41,696,058	$ 42,946,940	$ 44,235,348	$ 45,562,408	$ 46,929,281	$ 48,337,159	$ 49,787,274	$ 51,280,892
Total Port of San Francisco Economic Benef	$ 60,873,404	$ 62,699,606	$ 39,302,534	$ 40,481,610	$ 41,696,058	$ 42,946,940	$ 44,235,348	$ 45,562,408	$ 46,929,281	$ 48,337,159	$ 49,787,274	$ 51,280,892
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION												
Port's 8 Cents of Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protectior	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION												
Available Sea Level Rise CFD Tax Proceed	$ 5,035,252	$ 5,135,957	$ 5,238,676	$ 5,343,449	$ 5,450,318	$ 5,559,325	$ 5,670,511	$ 5,783,922	$ 5,899,600	$ 6,017,592	$ 6,137,944	$ 6,260,703
Available Condominium CFD Facilities Tax Proceed	$ 27,355,985	$ 27,903,105	$ 28,461,167	$ 29,030,390	$ 29,610,998	$ 30,203,218	$ 30,807,282	$ 31,423,428	$ 32,051,896	$ 32,692,934	$ 33,346,793	$ 34,013,729
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 8,850,135	$ 9,027,138	$ 9,207,681	$ 9,391,834	$ 9,579,671	$ 9,771,264	$ 9,966,690	$ 10,166,023	$ 10,369,344	$ 10,576,731	$ 10,788,265	$ 11,004,031
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 41,241,372	$ 42,066,199	$ 42,907,523	$ 43,765,674	$ 44,640,987	$ 45,533,807	$ 46,444,483	$ 47,373,373	$ 48,320,840	$ 49,287,257	$ 50,273,002	$ 51,278,462

Notes:

*** *All numbers are preliminary estimates and subject to further change* **

(a) Numerical estimates are expressed in nominal terms unless otherwise denoted

(b) Estimated peak equity assuming development of each phase on a stand-alone basis

FP SCHEDULE 2

Sample Cumulative IRR Calculation

[see attached]

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J
4	**FP Schedule 2 - Sample Calculation for Cumulative IRR**								
5		**Qtr 1**	**Qtr 2**	**Qtr 3**	**Qtr 4**	**Qtr 5**	**Qtr 6**	**Qtr 7**	**Qtr 8**
6	Developer Capital	(27,000,000)	(3,000,000)	-	-	-	-	-	-
7	Distribution of Developer Return	-	-	500,000	1,000,000	1,500,000	2,000,000	2,500,000	50,000
8	Return of Developer Capital	-	-	-	-	-	-	-	30,000,000
9	Developer Share of Interim Satisfaction Balance	-	-	-	-	-	-	-	3,000,000
10	**Net Cash Flow**	**(27,000,000)**	**(3,000,000)**	**500,000**	**1,000,000**	**1,500,000**	**2,000,000**	**2,500,000**	**33,050,000**
11	**IRR**	NA	NA	NA	-99%	-94%	-83%	-69%	21%

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G
1					FP Schedule 2 - Sample Calculation for Cumulative IRR - Formulas	
2		Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5
3	Developer Capital	-27000000	-3000000	0	0	0
4	Distribution of Developer Return	0	0	500000	1000000	1500000
5	Return of Developer Capital	0	0	0	0	0
6	Developer Share of Interim Satisfaction Balance	0	0	0	0	0
7	Net Cash Flow	=SUM(C6:C9)	=SUM(D6:D9)	=SUM(E6:E9)	=SUM(F6:F9)	=SUM(G6:G9)
8	IRR	=IFERROR((1+IRR($C10:C10))^4-1, "NA")	=IFERROR((1+IRR($C10:D10))^4-1, "NA")	=IFERROR((1+IRR($C10:E10))^4-1, "NA")	=IFERROR((1+IRR($C10:F10))^4-1, "NA")	=IFERROR((1+IRR($C10:G10))^4-1, "NA")

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H	I	J
1				
2		Qtr 6	Qtr 7	Qtr 8
3	Developer Capital	0	0	0
4	Distribution of Developer Return	2000000	2500000	50000
5'	Return of Developer Capital	0	0	30000000
6	Developer Share of Interim Satisfaction Balance	0	0	=3000000
7	Net Cash Flow	=SUM(H6:H9)	=SUM(I6:I9)	=SUM(J6:J9)
8	IRR	=IFERROR((1+IRR($C10:H10))^4-1, "NA")	=IFERROR((1+IRR($C10:I10))^4-1, "NA")	=IFERROR((1+IRR($C10:J10))^4-1, "NA")

FP Schedule 3
Preliminary Entitlement Cost Statement

Quarter Cost Incurred	Preliminary Entitlement Costs (Preliminary Cost Statement) General Expenses	Travel & Expenses	Total	Return[1]
Q3 2011	$ 471,041	$ 3,327	$ 474,367	$ 1,015,468
Q4 2011	$ 753,214	$ 989	$ 754,204	$ 1,512,506
Q1 2012	$ 161,769	$ 262	$ 162,030	$ 303,971
Q2 2012	$ 92,001	$ 1,618	$ 93,619	$ 164,037
Q3 2012	$ 284,836	$ 1,015	$ 285,851	$ 466,981
Q4 2012	$ 637,920	$ -	$ 637,920	$ 969,793
Q1 2013	$ 292,529	$ 934	$ 293,463	$ 414,286
Q2 2013	$ 419,104	$ -	$ 419,104	$ 548,129
Q3 2013	$ 167,438	$ -	$ 167,438	$ 202,345
Q4 2013	$ 627,402	$ 447	$ 627,848	$ 699,032
Q1 2014	$ 731,903	$ 3,217	$ 735,120	$ 751,565
Q2 2014	$ 533,415	$ 880	$ 534,295	$ 499,716
Q3 2014	$ 224,431	$ 883	$ 225,313	$ 191,954
Q4 2014	$ 665,397	$ 2,892	$ 668,289	$ 516,050
Q1 2015	$ 524,575	$ -	$ 524,575	$ 365,042
Q2 2015	$ 869,862	$ 455	$ 870,317	$ 542,080
Q3 2015	$ 863,417	$ 5,275	$ 868,692	$ 480,360
Q4 2015	$ 1,362,933	$ 3,084	$ 1,366,017	$ 664,014
Q1 2016	$ 1,320,265	$ 9,935	$ 1,330,200	$ 561,478
Q2 2016	$ 1,016,873	$ 4,802	$ 1,021,675	$ 368,683
Q3 2016	$ 1,127,579	$ 1,270	$ 1,128,848	$ 341,206
Q4 2016	$ 3,001,988	$ 14,513	$ 3,016,501	$ 742,608
Q1 2017	$ 1,432,566	$ 17,800	$ 1,450,366	$ 279,222
Q2 2017	$ 391,499	$ 1,368	$ 392,866	$ 55,459
Total	**$ 17,973,954**	**$ 74,965**	**$ 18,048,920**	**$ 12,655,987**

Notes:

1. Assumes 18 percent return on entitlement costs, compounded quarterly

FP SCHEDULE 4

OVERVIEW OF PROJECT PAYMENT SOURCES (OTHER THAN PORT CAPITAL)[1]

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
Parcel K North	Land Proceeds[3]	o 20th/Illinois Plaza o FC Project Area Capital Costs[4] o Revenue-sharing[5]
28-Acre Site parcels	Land Proceeds[3]	o FC Project Area Capital Costs[4] o Revenue-sharing[5]
Sub-Project Areas G-2, G-3, and G-4, IFD Project Area G (28-Acre Site, Parcel K North)	Project Tax Increment[6] (91.11%)	o Special Debt Service o FC Project Area Capital Costs, except certain Public Benefit Costs and Excess Return under current law o Leased Property Backup Fund o PNLP Payments o Historic Building Feasibility Gap o Debt service on Bonds secured by Project Tax Increment o Pier 70 Shoreline Protection Facilities
	Port Tax Increment[7] (8.89%)	o Irish Hill Park o Port Improvements o Special Debt Service for Historic Building Feasibility Gap solely on the conditions specified in **Financing Plan Article 11** (Historic Buildings) o Debt service on Bonds secured by Port Tax Increment
Pier 70 Leased Property CFD (28-Acre Site) ***Zone 1***: Phase 1 except Historic Bldg. 12 ***Zone 2***: All Later Phase NOI Property except Historic Bldg. 21	Facilities Special Taxes levied on All[8] **Special Debt Service credit available on Bonds**	o FC Project Area Capital Costs o PNLP Payments o Historic Building Feasibility Gap if Zone 3 Special Taxes are insufficient o Debt service on Bonds secured by Pier 70 Leased Property CFD Special Taxes o Shoreline Adaption Studies and Shoreline Protection Facilities o Pier 70 Shoreline Protection Facilities

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1 Capitalized terms used but not defined have the meanings given in the Appendix.

2 Application of funds described in this Schedule is subject to all priorities and limitations specified in the Financing Plan and are subject to compliance with Governing Law and Policy Certain costs may be paid from Pier 70 CFD Proceeds only if the San Francisco Special Tax Financing Law is amended.

3 The Port may use Advances of Land Proceeds for all Capital Costs.

4 FC Project Area includes public facilities adjacent to the 28-Acre Site that are Developer Construction Obligations under the DDA.

5 By distributions at Interim Satisfaction or from Project Surplus, which includes PNLP Payments.

6 Use of funds to the extent qualified under IFD Law.

7 Use of funds to the extent qualified under IFD Law

8 Use of funds to the extent qualified under IFD Law if Special Debt Service applies.

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
Zone 3: Historic Bldg. 12 and Historic Bldg. 21 ***All***: Zones 1, 2, and 3	Facilities Special Taxes levied in Zone 3, allocated by HB **Special Debt Service credit available on Bonds from Project Tax Increment generated in Zone 3 before Port Tax Increment, allocated by HB**	o Historic Building Feasibility Gap o FC Project Area Capital Costs o PNLP Payments o Debt service on Bonds secured by Pier 70 Leased Property CFD Special Taxes
	Shoreline Special Taxes levied on Zones 1 and 2 only	o Project Reserve Account[9] o Shoreline Account[10] o Debt service on Bonds secured by Shoreline Special Taxes

	Arts Building Special Tax levied on Zones 1 and 2 only (in combination with Pier 70 Condo CFD Arts Building Special Taxes)	o Match up to:
		  o $13.5M for Stand-Alone Noonan Building or relocated Building 11 and $4M for Arts Building (subject to conditions), or
		  o $17.5M for Arts Building if Noonan Replacement Space is in Arts Building
		o $2.5M for community facilities subject to the CF Conditions
		o Any public building on Parcel E4
		o Debt service on Bonds secured by Arts Building Special Taxes

	Services Special Taxes levied on Zones 1 and 2 only	o FC Project Area Maintained Facilities, consisting of:
		  o Public Spaces and Public ROWs in the FC Project Area; and
		  o Shoreline Improvements in and adjacent to the FC Project Area

9 Pays for Capital Costs and Historic Building Feasibility Gap.

10 Pays for Shoreline Adaption Studies, Shoreline Protection Facilities, and Pier 70 Shoreline Protection Facilities.

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
Pier 70 Condo CFD (28-Acre Site, Parcel K North) ***Zone 1***: Parcel K North ***Zone 2***: Residential Condo Projects in 28-Acre Site ***All***: Zone 1 and Zone 2	Facilities Special Taxes levied on All **NO Special Debt Service credit on Bonds**	o Michigan Street segment o FC Project Area Capital Costs o PNLP Payments o Historic Building Feasibility Gap if Special Taxes from Zone 3 of the Pier 70 Leased Property CFD are insufficient o Debt service on Bonds secured by Pier 70 Condo Special Taxes o Pier 70 Shoreline Protection Facilities o Promissory Note-X o Shoreline Adaption Studies and Shoreline Protection Facilities

	Arts Building Special Tax levied on Zone 2 only
	(in combination with Pier 70 Leased Property CFD Arts Building Special Taxes)
		o Match up to:
		  o $13.5M for Stand-Alone Noonan Building or relocated Building 11 and $4M for Arts Building (subject to conditions); or
		  o $17.5M for Arts Building if Noonan Replacement Space is in Arts Building
		o $2.5M for community facilities subject to the CF Conditions
		o Any public building on Parcel E4
		o Debt service on Bonds secured by Arts Building Special Taxes

	Services Special Taxes levied on Zone 1 only	o Parcel K North Maintained Facilities, consisting of:
		  o Public Spaces and Public ROWs in Zone 1;
		  o Public Spaces outside of the FC Project Area and the 20th Street CFD;
		  o Public ROWs in Pier 70 north of 20th Street and outside of 20th Street CFD; and
		  o Shoreline Protection Facilities.

	Services Special Taxes levied on Zone 2 only	o FC Project Area Maintained Facilities, consisting of:
		  o Public Spaces and Public ROWs in the FC Project Area; and
		  o Shoreline Improvements in and adjacent to the FC Project Area.

Hoedown Yard CFD (Hoedown Yard)	Facilities Special Taxes	o Irish Hill Park o Acquisition of shoreline space near former Hunters Point Power Plant o Other Port Capital Costs, including Shoreline Protection Studies and Shoreline Protection Facilities o Debt service on Bonds secured by Hoedown Yard Special Taxes

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
	Services Special Taxes	o HDY Maintained Facilities, consisting of: o Public Spaces and Public ROWs in the Hoedown Yard CFD; o Public Spaces outside of the FC Project Area and the 20th Street CFD; o Public ROWs in Pier 70 north of 20th Street and outside of 20th Street CFD; and o Shoreline Protection Facilities.
IRFD No. 2 (Hoedown Yard)	Housing Tax Increment	o Affordable Housing Parcels in the AHP Housing Area o IRFD Bond Debt Service

FP SCHEDULE 5

Sample Credit Bid Calculations

[see attached]

FP Schedule 5 - Sample Credit Bid Calculations

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
5	**FP Schedule 5 - Sample Credit Bid Calculations**		
6	Land Proceeds		10,000,000
7			
8	Developer Balances		
9	Entitlements Sum and Accrued Developer Return		2,000,000
10	Pre Existing Developer Balance		1,000,000
11	Developer Balance		7,080,000
12	Total Developer Balances		10,080,000
13			
14	Port Balance		2,200,000
15			
16	Step 1 - Pay Entitlement Sum and Accrued Developer Return		
17	Pay Entitlement Sum and Accrued Developer Return via Credit Bid		2,000,000
18			
19	Remaining Land Proceeds		8,000,000
20			
21	Step 2 - Pay Pre Existing Developer Balance		
22	Pay Pre Existing Developer Balance via Credit Bid		1,000,000
23			
24	Remaining Land Proceeds		7,000,000
25			
26	Step 3 - Pay Post Approval Developer Return and Port Return Balances		
27	Pay Allowed and Excess Return on Developer Capital via Credit Bid	76%	5,340,517
28	Pay Allowed and Excess Return on Port Capital	24%	1,659,483
29			
30	Remaining Land Proceeds		-
31			
32	**Credit Bid Amount by Developer**		8,340,517
33	Required Cash Payment to Port		1,659,483

FP Schedule 5 - Sample Credit Bid Calculations - Formulas

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
5	**FP Schedule 5 - Sample Credit Bid Calculations - Formulas**		
6	Land Proceeds		10000000
7			
8	Developer Balances		
9	Entitlements Sum and Accrued Developer Return		2000000
10	Pre Existing Developer Balance		1000000
11	Developer Balance		7080000
12	Total Developer Balances		=SUM(D9:D11)
13			
14	Port Balance		2200000
15			
16	Step 1 - Pay Entitlement Sum and Accrued Developer Return		
17	Pay Entitlement Sum and Accrued Developer Return via Credit Bid		=MIN(D6,D9)
18			
19	Remaining Land Proceeds		=D6-D17
20			
21	Step 2 - Pay Pre Existing Developer Balance		
22	Pay Pre Existing Developer Balance via Credit Bid		=MIN(D19,D10)
23			
24	Remaining Land Proceeds		=D19-D22
25			
26	Step 3 - Pay Post Approval Developer Return and Port Return Balances		
27	Pay Allowed and Excess Return on Developer Capital via Credit Bid	=(D11)/(D11+D14)	=MIN(C27*D24,D11)
28	Pay Allowed and Excess Return on Port Capital	=D14/(D11+D14)	=MIN(C28*D24,D14)
29			
30	Remaining Land Proceeds		=D24-D27-D28
31			
32	**Credit Bid Amount by Developer**		=D17+D22+D27
33	Required Cash Payment to Port		=D28

FP SCHEDULE 6

Sample Pro Rata Payments Calculations

[see attached]

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
	Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero									
	Annual Developer Return Rate	18%								
	Annual Return on Port Capital Rate	10%								
			Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6	Qtr 7	Qtr 8
1	Amount Available to be Distributed		-	-	(1,000,000)	(2,000,000)	(1,000,000)	-	(2,000,000)	(1,000,000)
2										
3	Developer Return on Pre-Existing Developer Balance									
4	Beginning Balance*	Quarterly	-	-	-	-	-	-	-	-
5	Developer Return Accrual	4.2%	-	-	-	-	-	-	-	-
6	Distributions		-	-	-	-	-	-	-	-
7	Ending Balance		-	-	-	-	-	-	-	-
8										
9	Pre Existing Developer Balance		5,000,000	-	-	-	-	-	-	-
10	Distribution from Amount Available		-	-	-	-	-	-	-	-
11	Distribution from Advances of Port Capital		(5,000,000)	-	-	-	-	-	-	-
12	Ending Balance		-	-	-	-	-	-	-	-
13										
14	Horizontal Development Costs		11,000,000	-	-	-	-	-	-	-
15	Funded by Developer Capital		(5,500,000)	-	-	-	-	-	-	-
16	Funded by Remaining Advances of Port Capital		(5,500,000)	-	-	-	-	-	-	-
17	Remaining Horizontal Development Costs		-	-	-	-	-	-	-	-
18										
19	Remaining Amount Available to be Distributed		-	-	(1,000,000)	(2,000,000)	(1,000,000)	-	(2,000,000)	(1,000,000)
20										
21	Developer Return									
22	Beginning Balance	Quarterly	-	-	232,356	117,366	-	-	197,247	-
23	Developer Return Accrual	4.2%	-	232,356	242,173	231,436	205,580	197,247	205,580	180,088
24	Distributions		-	-	(357,163)	(348,801)	(205,580)	-	(402,828)	(180,088)
25	Ending Balance		-	232,356	117,366	-	-	197,247	-	-
26	**Pro Rata Developer Return Percentage**		34%	35%	36%	35%	35%	35%	35%	35%
27										
28	Return on Port Capital									
29	Beginning Balance	Quarterly	-	-	253,194	-	-	-	216,256	-
30	Return on Port Capital Accrual	2.4%	-	253,194	-	247,154	225,225	216,256	221,470	198,091
31	Distributions		-	-	(253,194)	(247,154)	(225,225)	-	(437,726)	(198,091)
32	Ending Balance		-	253,194	-	-	-	216,256	-	-
33	**Pro Rata Port Return Percentage**		66%	65%	64%	65%	65%	65%	65%	65%
34										
35	Remaining Amount Available to be Distributed		-	-	(389,643)	(1,404,045)	(569,195)	-	(1,159,446)	(621,821)
36										
37	Developer Capital									
38	Beginning Balance		-	5,500,000	5,500,000	5,360,834	4,866,176	4,668,950	4,668,950	4,262,776
39	Developer Capital Contributions		5,500,000	-	-	-	-	-	-	-
40	Distributions		-	-	(139,166)	(494,658)	(197,226)	-	(406,174)	(214,896)
41	Ending Balance		5,500,000	5,500,000	5,360,834	4,866,176	4,668,950	4,668,950	4,262,776	4,047,880
42	**Pro Rata Developer Capital Percentage**		34%	35%	36%	35%	35%	35%	35%	35%
43										
44	Port Capital									
45	Beginning Balance		-	10,500,000	10,500,000	10,249,523	9,340,137	8,968,167	8,968,167	8,214,895
46	Advances of Port Capital Contributions		10,500,000	-	-	-	-	-	-	-
47	Distributions		-	-	(250,477)	(909,387)	(371,969)	-	(753,272)	(406,925)
48	Ending Balance		10,500,000	10,500,000	10,249,523	9,340,137	8,968,167	8,968,167	8,214,895	7,807,970
49	**Pro Rata Port Capital Percentage**		66%	65%	64%	65%	65%	65%	65%	65%
50										
51	Remaining Amount Available to be Distributed		-	-	-	-	-	-	-	-
52										
53	**Pre Existing Developer Balance**		-	-	-	-	-	-	-	-
54	**Developer Balance**		5,500,000	5,732,356	5,478,200	4,866,176	4,668,950	4,866,197	4,262,776	4,047,880
55	**Port Balance**		10,500,000	10,753,194	10,249,523	9,340,137	8,968,167	9,184,423	8,214,895	7,807,970
56										
57	**Net Quarterly Developer Cash Flow**		(500,000)	-	496,329	843,460	402,806	-	809,002	394,983

* Beginning Balance included in beginning Pre Existing Developer Balance.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4			Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	0.18	
6	Annual Return on Port Capital Rate	0.1	
7			Qtr 1
8	Amount Available to be Distributed		0
9			
10	Developer Return on Pre-Existing Developer Balance		
11	Beginning Balance*	Quarterly	0
12	Developer Return Accrual	=(1+C5)^(1/4)-1	0
13	Distributions		=MAX(D8,-SUM(D11:D12))
14	Ending Balance		=SUM(D11:D13)
15			
16	Pre Existing Developer Balance		5000000
17	*Distribution from Amount Available*		*=-MIN(D16,-(D8-D13))*
18	Distribution from Advances of Port Capital		=-MIN(D16,D53)
19	Ending Balance		=SUM(D16:D18)
20			
21	Horizontal Development Costs		11000000
22	Funded by Developer Capital		=-D46
23	Funded by Remaining Advances of Port Capital		=-(D53+D18)
24	Remaining Horizontal Development Costs		=SUM(D21:D23)
25			
26	*Remaining Amount Available to be Distributed*		*=D8-D13-D17*
27			
28	Developer Return		
29	Beginning Balance	Quarterly.	0
30	Developer Return Accrual	=(1+C5)^(1/4)-1	0
31	Distributions		=MAX(D26*D33,-SUM(D29:D30))
32	Ending Balance		=SUM(D29:D31)
33	**Pro Rata Developer Return Percentage**		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D29+D30+D45+D46)/(D29+D30+D36+D37+D45+D46+D52+D53))
34			
35	Return on Port Capital		
36	Beginning Balance	Quarterly	0
37	Return on Port Capital Accrual	=(1+C6)^(1/4)-1	0
38	Distributions		=MAX(D26*D40,-SUM(D36:D37))
39	Ending Balance		=SUM(D36:D38)
40	**Pro Rata Port Return Percentage**		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D36+D37+D52+D53)/(D29+D30+D36+D37+D45+D46+D52+D53))
41			
42	Remaining Amount Available to be Distributed		=D26-D31-D38
43			
44	Developer Capital		
45	Beginning Balance		0
46	Developer Capital Contributions		5500000
47	Distributions		=MAX(D42*D49,-SUM(D45:D46))
48	Ending Balance		=SUM(D45:D47)
49	**Pro Rata Developer Capital Percentage**		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D29+D30+D45+D46)/(D29+D30+D36+D37+D45+D46+D52+D53))
50			
51	Port Capital		
52	Beginning Balance		0
53	Advances of Port Capital Contributions		10500000
54	Distributions		=MAX(D42*D56,-SUM(D52:D53))
55	Ending Balance		=SUM(D52:D54)
56	**Pro Rata Port Capital Percentage**		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D36+D37+D52+D53)/(D29+D30+D36+D37+D45+D46+D52+D53))
57			
58	Remaining Amount Available to be Distributed		=D42-D47-D54
59			
60	**Pre Existing Developer Balance**		=D14+D19
61	**Developer Balance**		=D32+D48
62	**Port Balance**		=D39+D55
63			
64	**Net Quarterly Developer Cash Flow**		=-SUM(D13,D17,D18,D31,D46,D47)

* Beginning Balance Included in beginning Pre Existing Developer Balance.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	E
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 2
8	Amount Available to be Distributed	0
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=D14
12	Developer Return Accrual	=$C12*(E11+E16)
13	Distributions	=MAX(E8,-SUM(E11:E12))
14	Ending Balance	=SUM(E11:E13)
15		
16	Pre Existing Developer Balance	=D19
17	Distribution from Amount Available	=-MIN(E16,-(E8-E13))
18	Distribution from Advances of Port Capital	=-MIN(E16,E53)
19	Ending Balance	=SUM(E16:E18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-E46
23	Funded by Remaining Advances of Port Capital	=-(E53+E18)
24	Remaining Horizontal Development Costs	=SUM(E21:E23)
25		
26	Remaining Amount Available to be Distributed	=E8-E13-E17
27		
28	Developer Return	
29	Beginning Balance	=D32
30	Developer Return Accrual	=$C30*(E29+E45)
31	Distributions	=MAX(E26*E33,-SUM(E29:E30))
32	Ending Balance	=SUM(E29:E31)
33	Pro Rata Developer Return Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E29+E30+E45+E46)/(E29+E30+E36+E37+E45+E46+E52+E53))
34		
35	Return on Port Capital	
36	Beginning Balance	=D39
37	Return on Port Capital Accrual	=$C37*(E36+E52)
38	Distributions	=MAX(E26*E40,-SUM(E36:E37))
39	Ending Balance	=SUM(E36:E38)
40	Pro Rata Port Return Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E36+E37+E52+E53)/(E29+E30+E36+E37+E45+E46+E52+E53))
41		
42	Remaining Amount Available to be Distributed	=E26-E31-E38
43		
44	Developer Capital	
45	Beginning Balance	=D48
46	Developer Capital Contributions	0
47	Distributions	=MAX(E42*E49,-SUM(E45:E46))
48	Ending Balance	=SUM(E45:E47)
49	Pro Rata Developer Capital Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E29+E30+E45+E46)/(E29+E30+E36+E37+E45+E46+E52+E53))
50		
51	Port Capital	
52	Beginning Balance	=D55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(E42*E56,-SUM(E52:E53))
55	Ending Balance	=SUM(E52:E54)
56	Pro Rata Port Capital Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E36+E37+E52+E53)/(E29+E30+E36+E37+E45+E46+E52+E53))
57		
58	Remaining Amount Available to be Distributed	=E42-E47-E54
59		
60	Pre Existing Developer Balance	=E14+E19
61	Developer Balance	=E32+E48
62	Port Balance	=E39+E55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(E13,E17,E18,E31,E46,F47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	F
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 3
8	Amount Available to be Distributed	-1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=E14
12	Developer Return Accrual	=$C12*(F11+F16)
13	Distributions	=MAX(F8,-SUM(F11:F12))
14	Ending Balance	=SUM(F11:F13)
15		
16	Pre Existing Developer Balance	=E19
17	Distribution from Amount Available	=-MIN(F16,-(F8-F13))
18	Distribution from Advances of Port Capital	=-MIN(F16,F53)
19	Ending Balance	=SUM(F16:F18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-F46
23	Funded by Remaining Advances of Port Capital	=-(F53+F18)
24	Remaining Horizontal Development Costs	=SUM(F21:F23)
25		
76	Remaining Amount Available to be Distributed	=F8-F13-F17
27		
28	Developer Return	
29	Beginning Balance	=E32
30	Developer Return Accrual	=$C30*(F29+F45)
31	Distributions	=MAX(F26*F33,-SUM(F29:F30))
32	Ending Balance	=SUM(F29:F31)
33	Pro Rata Developer Return Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F29+F30+F45+F46)/(F29+F30+F36+F37+F45+F46+F52+F53))
34		
35	Return on Port Capital	
36	Beginning Balance	=E39
37	Return on Port Capital Accrual	0
38	Distributions	=MAX(F26*F40,-SUM(F36:F37))
39	Ending Balance	=SUM(F36:F38)
40	Pro Rata Port Return Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F36+F37+F52+F53)/(F29+F30+F36+F37+F45+F46+F52+F53))
41		
42	Remaining Amount Available to be Distributed	=F26-F31-F38
43		
44	Developer Capital	
45	Beginning Balance	=E48
46	Developer Capital Contributions	0
47	Distributions	=MAX(F42*F49,-SUM(F45:F46))
48	Ending Balance	=SUM(F45:F47)
49	Pro Rata Developer Capital Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F29+F30+F45+F46)/(F29+F30+F36+F37+F45+F46+F52+F53))
50		
51	Port Capital	
52	Beginning Balance	=E55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(F42*F56,-SUM(F52:F53))
55	Ending Balance	=SUM(F52:F54)
56	Pro Rata Port Capital Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F36+F37+F52+F53)/(F29+F30+F36+F37+F45+F46+F52+F53))
57		
58	Remaining Amount Available to be Distributed	=F42-F47-F54
59		
60	Pre Existing Developer Balance	=F14+F19
61	Developer Balance	=F32+F48
62	Port Balance	=F39+F55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(F13,F17,F18,F31,F46,F47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 4
8	Amount Available to be Distributed	-2000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=F14
12	Developer Return Accrual	=$C12*(G11+G16)
13	Distributions	=MAX(G8,-SUM(G11:G12))
14	Ending Balance*	=SUM(G11:G13)
15		
16	Pre Existing Developer Balance	=F19
17	Distribution from Amount Available	=-MIN(G16,-(G8-G13))
18	Distribution from Advances of Port Capital	=-MIN(G16,G53)
19	Ending Balance	=SUM(G16:G18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-G46
23	Funded by Remaining Advances of Port Capital	=-(G53+G18)
24	Remaining Horizontal Development Costs	=SUM(G21:G23)
25		
26	Remaining Amount Available to be Distributed	=G8-G13-G17
27		
28	Developer Return	
29	Beginning Balance	=F32
30	Developer Return Accrual	=$C30*(G29+G45)
31	Distributions	=MAX(G26*G33,-SUM(G29:G30))
32	Ending Balance	=SUM(G29:G31)
33	Pro Rata Developer Return Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G29+G30+G45+G46)/(G29+G30+G36+G37+G45+G46+G52+G53))
34		
35	Return on Port Capital	
36	Beginning Balance	=F39
37	Return on Port Capital Accrual	=$C37*(G36+G52)
38	Distributions	=MAX(G26*G40,-SUM(G36:G37))
39	Ending Balance	=SUM(G36:G38)
40	Pro Rata Port Return Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G36+G37+G52+G53)/(G29+G30+G36+G37+G45+G46+G52+G53))
41		
42	Remaining Amount Available to be Distributed	=G26-G31-G38
43		
44	Developer Capital	
45	Beginning Balance	=F48
46	Developer Capital Contributions	0
47	Distributions	=MAX(G42*G49,-SUM(G45:G46))
48	Ending Balance	=SUM(G45:G47)
49	Pro Rata Developer Capital Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G29+G30+G45+G46)/(G29+G30+G36+G37+G45+G46+G52+G53))
50		
51	Port Capital	
52	Beginning Balance	=F55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(G42*G56,-SUM(G52:G53))
55	Ending Balance	=SUM(G52:G54)
56	Pro Rata Port Capital Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G36+G37+G52+G53)/(G29+G30+G36+G37+G45+G46+G52+G53))
57		
58	Remaining Amount Available to be Distributed	=G42-G47-G54
59		
60	Pre Existing Developer Balance	=G14+G19
61	Developer Balance	=G32+G48
62	Port Balance	=G39+G55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(G13,G17,G18,G31,G46,G47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 5
8	Amount Available to be Distributed	1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=G14
12	Developer Return Accrual	=$C12*(H11+H16)
13	Distributions	=MAX(H8,-SUM(H11:H12))
14	Ending Balance	=SUM(H11:H13)
15		
16	Pre Existing Developer Balance	=G19
17	Distribution from Amount Available	=-MIN(H16,-(H8-H13))
18	Distribution from Advances of Port Capital	=-MIN(H16,H53)
19	Ending Balance	=SUM(H16:H18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-H46
23	Funded by Remaining Advances of Port Capital	=-(H53+H18)
24	Remaining Horizontal Development Costs	=SUM(H21:H23)
25		
26	Remaining Amount Available to be Distributed	=H8-H13-H17
27		
28	Developer Return	
29	Beginning Balance	=G32
30	Developer Return Accrual	=$C30*(H29+H45)
31	Distributions	=MAX(H26*H33,-SUM(H29:H30))
32	Ending Balance	=SUM(H29:H31)
33	Pro Rata Developer Return Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H29+H30+H45+H46)/(H29+H30+H36+H37+H45+H46+H52+H53))
34		
35	Return on Port Capital	
36	Beginning Balance	=G39
37	Return on Port Capital Accrual	=$C37*(H36+H52)
38	Distributions	=MAX(H26*H40,-SUM(H36:H37))
39	Ending Balance	=SUM(H36:H38)
40	Pro Rata Port Return Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H36+H37+H52+H53)/(H29+H30+H36+H37+H45+H46+H52+H53))
41		
42	Remaining Amount Available to be Distributed	=H26-H31-H38
43		
44	Developer Capital	
45	Beginning Balance	=G48
46	Developer Capital Contributions	0
47	Distributions	=MAX(H42*H49,-SUM(H45.H46))
48	Ending Balance	=SUM(H45:H47)
49	Pro Rata Developer Capital Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H29+H30+H45+H46)/(H29+H30+H36+H37+H45+H46+H52+H53))
50		
51	Port Capital	
52	Beginning Balance	=G55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(H42*H56,-SUM(H52:H53))
55	Ending Balance	=SUM(H52:H54)
56	Pro Rata Port Capital Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H36+H37+H52+H53)/(H29+H30+H36+H37+H45+H46+H52+H53))
57		
58	Remaining Amount Available to be Distributed	=H42-H47-H54
59		
60	Pre Existing Developer Balance	=H14+H19
61	Developer Balance	=H32+H48
62	Port Balance	=H39+H55
63		
64	Net Quarterly Developer Cash Flow	= SUM(H13,H17,H18,H31,H46,H47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		**Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas**
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 6
8	Amount Available to be Distributed	0
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=H14
12	Developer Return Accrual	=$C12*(I11+I16)
13	Distributions	=MAX(I8,-SUM(I11:I12))
14	Ending Balance	=SUM(I11:I13)
15		
16	Pre Existing Developer Balance	=H19
17	Distribution from Amount Available	=-MIN(I16,-(I8-I13))
18	Distribution from Advances of Port Capital	=-MIN(I16,I53)
19	Ending Balance	=SUM(I16:I18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-I46
23	Funded by Remaining Advances of Port Capital	=-(I53+I18)
24	Remaining Horizontal Development Costs	=SUM(I21:I23)
25		
26	Remaining Amount Available to be Distributed	=I8-I13-I17
27		
28	Developer Return	
29	Beginning Balance	=H32
30	Developer Return Accrual'	=$C30*(I29+I45)
31	Distributions	=MAX(I26*I33,-SUM(I29:I30))
32	Ending Balance	=SUM(I29:I31)
33	**Pro Rata Developer Return Percentage**	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I29+I30+I45+I46)/(I29+I30+I36+I37+I45+I46+I52+I53))
34		
35	Return on Port Capital	
36	Beginning Balance	=H39
37	Return on Port Capital Accrual	=$C37*(I36+I52)
38	Distributions	=MAX(I26*I40,-SUM(I36:I37))
39	Ending Balance	=SUM(I36:I38)
40	**Pro Rata Port Return Percentage**	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I36+I37+I52+I53)/(I29+I30+I36+I37+I45+I46+I52+I53))
41		
42	Remaining Amount Available to be Distributed	=I26-I31-I38
43		
44	Developer Capital	
45	Beginning Balance	=H48
46	Developer Capital Contributions	0
47	Distributions	=MAX(I42*I49,-SUM(I45.I46))
48	Ending Balance	=SUM(I45:I47)
49	**Pro Rata Developer Capital Percentage**	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I29+I30+I45+I46)/(I29+I30+I36+I37+I45+I46+I52+I53))
50		
51	Port Capital	
52	Beginning Balance	=H55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(I42*I56,-SUM(I52:I53))
55	Ending Balance	=SUM(I52:I54)
56	**Pro Rata Port Capital Percentage**	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I36+I37+I52+I53)/(I29+I30+I36+I37+I45+I46+I52+I53))
57		
58	Remaining Amount Available to be Distributed	=I42-I47-I54
59		
60	**Pre Existing Developer Balance**	=I14+I19
61	**Developer Balance**	=I32+I48
62	**Port Balance**	=I39+I55
63		
64	**Net Quarterly Developer Cash Flow**	=-SUM(I13,I17,I18,I31,I46,I47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		**Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas**
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 7
8	Amount Available to be Distributed	-2000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=I14
12	Developer Return Accrual	=$C12*(J11+J16)
13	Distributions	=MAX(J8,-SUM(J11:J12))
14	Ending Balance	=SUM(J11:J13)
15		
16	Pre Existing Developer Balance	=I19
17	Distribution from Amount Available	=-MIN(J16,-(J8-J13))
18	Distribution from Advances of Port Capital	=-MIN(J16,J53)
19	Ending Balance	=SUM(J16:J18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-J46
23	Funded by Remaining Advances of Port Capital	=-(J53+J18)
24	Remaining Horizontal Development Costs	=SUM(J21:J23)
25		
26	Remaining Amount Available to be Distributed	=J8-J13-J17
27		
28	Developer Return	
29	Beginning Balance	=I32
30	Developer Return Accrual	=$C30*(J29+J45)
31	Distributions	=MAX(J26*J33,-SUM(J29:J30))
32	*Ending Balance*	*=SUM(J29:J31)*
33	**Pro Rata Developer Return Percentage**	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J29+J30+J45+J46)/(J29+J30+J36+J37+J45+J46+J52+J53))
34		
35	Return on Port Capital	
36	Beginning Balance	=I39
37	Return on Port Capital Accrual	=$C37*(I36+J52)
38	Distributions	=MAX(J26*J40,-SUM(J36:J37))
39	Ending Balance	=SUM(J36:J38)
40	**Pro Rata Port Return Percentage**	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J36+J37+J52+J53)/(J29+J30+J36+J37+J45+J46+J52+J53))
41		
42	Remaining Amount Available to be Distributed	=J26-J31-J38
43		
44	Developer Capital	
45	Beginning Balance	=I48
46	Developer Capital Contributions	0
47	Distributions	=MAX(J42*J49,-SUM(J45:J46))
48	Ending Balance	=SUM(J45:J47)
49	**Pro Rata Developer Capital Percentage**	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J29+J30+J45+J46)/(J29+J30+J36+J37+J45+J46+J52+J53))
50		
51	Port Capital	
52	Beginning Balance	=I55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(J42*J56,-SUM(J52:J53))
55	Ending Balance	=SUM(J52:J54)
56	**Pro Rata Port Capital Percentage**	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J36+J37+J52+J53)/(J29+J30+J36+J37+J45+J46+J52+J53))
57		
58	Remaining Amount Available to be Distributed	=J42-J47-J54
59		
60	**Pre Existing Developer Balance**	=J14+J19
61	***Developer Balance***	=J32+J48
62	**Port Balance**	=J39+I55
63		
64	**Net Quarterly Developer Cash Flow**	=-SUM(J13,J17,J18,J31,J46,J47)

** Beginning Balance included in beginning Pre Existing*

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		**Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas**
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		**Qtr 8**
8	Amount Available to be Distributed	-1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=J14
12	Developer Return Accrual	=$C12*(K11+K16)
13	Distributions	=MAX(K8,-SUM(K11.K12))
14	Ending Balance	=SUM(K11:K13)
15		
16	Pre Existing Developer Balance	=J19
17	Distribution from Amount Available	=-MIN(K16,-(K8-K13))
18	Distribution from Advances of Port Capital	=-MIN(K16,K53)
19	Ending Balance	=SUM(K16:K18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-K46
23	Funded by Remaining Advances of Port Capital	=-(K53+K18)
24	Remaining Horizontal Development Costs	=SUM(K21:K23)
25		
26	Remaining Amount Available to be Distributed	=K8-K13-K17
27		
28	Developer Return	
29	Beginning Balance	=J32
30	Developer Return Accrual	=$C30*(K29+K45)
31	Distributions	=MAX(K26*K33,-SUM(K29:K30))
32	Ending Balance	=SUM(K29:K31)
33	**Pro Rata Developer Return Percentage**	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K29+K30+K45+K46)/(K29+K30+K36+K37+K45+K46+K52+K53))
34		
35	Return on Port Capital	
36	Beginning Balance	=J39
37	Return on Port Capital Accrual	=$C37*(K36+K52)
38	Distributions	=MAX(K26*K40,-SUM(K36:K37))
39	Ending Balance	=SUM(K36:K38)
40	**Pro Rata Port Return Percentage**	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K36+K37+K52+K53)/(K29+K30+K36+K37+K45+K46+K52+K53))
41		
42	Remaining Amount Available to be Distributed	=K26-K31-K38
43		
44	Developer Capital	
45	Beginning Balance	=J48
46	Developer Capital Contributions	0
47	Distributions	=MAX(K42*K49,-SUM(K45.K46))
48	Ending Balance	=SUM(K45:K47)
49	**Pro Rata Developer Capital Percentage**	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K29+K30+K45+K46)/(K29+K30+K36+K37+K45+K46+K52+K53))
50		
51	Port Capital	
52	Beginning Balance	=J55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(K42*K56,-SUM(K52:K53))
55	Ending Balance	=SUM(K52:K54)
56	**Pro Rata Port Capital Percentage**	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K36+K37+K52+K53)/(K29+K30+K36+K37+K45+K46+K52+K53))
57		
58	Remaining Amount Available to be Distributed	=K42-K47-K54
59		
60	**Pre Existing Developer Balance**	=K14+K19
61	**Developer Balance**	=K32+K48
62	**Port Balance**	=K39+K55
63		
64	**Net Quarterly Developer Cash Flow**	=-SUM(K13,K17,K18,K31,K46,K47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
	Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero									
5	Annual Developer Return Rate	18%								
6	Annual Return on Port Capital Rate	10%								
7			Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6	Qtr 7	Qtr 8
8	Amount Available to be Distributed		-	-	(1,000,000)	(2,000,000)	(1,000,000)	-	(2,000,000)	(1,000,000)
9										
10	Developer Return on Pre-Existing Developer Balance									
11	Beginning Balance*	Quarterly	-	-	21,123	-	-	-	-	-
12	Developer Return Accrual	4.2%	-	21,123	22,016	-	-	-	-	-
13	Distributions		-	-	(43,139)	-	-	-	-	-
14	Ending Balance		-	21,123	-	-	-	-	-	-
15										
16	Pre Existing Developer Balance		11,000,000	500,000	500,000	-	-	-	-	-
17	Distribution from Amount Available		-	-	(500,000)	-	-	-	-	-
18	Distribution from Advances of Port Capital		(10,500,000)	-	-	-	-	-	-	-
19	Ending Balance		500,000	500,000	-	-	-	-	-	-
20										
21	Horizontal Development Costs		11,000,000	-	-	-	-	-	-	-
22	Funded by Developer Capital		(11,000,000)	-	-	-	-	-	-	-
23	Funded by Remaining Advances of Port Capital		-	-	-	-	-	-	-	-
24	Remaining Horizontal Development Costs		-	-	-	-	-	-	-	-
25										
26	Remaining Amount Available to be Distributed		-	-	(456,861)	(2,000,000)	(1,000,000)	-	(2,000,000)	(1,000,000)
27										
28	Developer Return									
29	Beginning Balance	Quarterly	-	-	464,713	711,311	156,528	99,696	554,733	-
30	Developer Return Accrual	4.2%	-	464,713	484,346	494,763	462,529	455,037	474,261	440,384
31	Distributions		-	-	(237,748)	(1,049,546)	(519,361)	-	(1,028,995)	(440,384)
32	Ending Balance		-	464,713	711,311	156,528	99,696	554,733	-	-
33	Pro Rata Developer Return Percentage		51%	52%	52%	52%	52%	52%	52%	52%
34										
35	Return on Port Capital									
36	Beginning Balance	Quarterly	-	-	253,194	293,380	-	-	245,958	-
37	Return on Port Capital Accrual	2.4%	-	253,194	259,299	260,268	248,647	245,958	251,889	240,508
38	Distributions		-	-	(219,113)	(553,648)	(248,647)	-	(497,846)	(240,508)
39	Ending Balance		-	253,194	293,380	-	-	245,958	-	-
40	Pro Rata Port Return Percentage		49%	48%	48%	48%	48%	48%	48%	48%
41										
42	Remaining Amount Available to be Distributed		-	-	-	(396,806)	(231,993)	-	(473,159)	(319,108)
43										
44	Developer Capital									
45	Beginning Balance		-	11,000,000	11,000,000	11,000,000	10,791,767	10,671,279	10,671,279	10,424,111
46	Developer Capital Contributions		11,000,000	-	-	-	-	-	-	-
47	Distributions		-	-	-	(208,233)	(120,488)	-	(247,168)	(164,475)
48	Ending Balance		11,000,000	11,000,000	11,000,000	10,791,767	10,671,279	10,671,279	10,424,111	10,259,636
49	Pro Rata Developer Capital Percentage		51%	52%	52%	52%	52%	52%	52%	52%
50										
51	Port Capital									
52	Beginning Balance		-	10,500,000	10,500,000	10,500,000	10,311,427	10,199,922	10,199,922	9,973,932
53	Advances of Port Capital Contributions		10,500,000	-	-	-	-	-	-	-
54	Distributions		-	-	-	(188,573)	(111,505)	-	(225,990)	(154,634)
55	Ending Balance		10,500,000	10,500,000	10,500,000	10,311,427	10,199,922	10,199,922	9,973,932	9,819,298
56	Pro Rata Port Capital Percentage		49%	48%	48%	48%	48%	48%	48%	48%
57										
58	Remaining Amount Available to be Distributed		-	-	-	-	-	-	-	-
59										
60	Pre Existing Developer Balance		500,000	521,123	-	-	-	-	-	-
61	Developer Balance		11,000,000	11,464,713	11,711,311	10,948,295	10,770,975	11,226,012	10,424,111	10,259,636
62	Port Balance		10,500,000	10,753,194	10,793,380	10,311,427	10,199,922	10,445,880	9,973,932	9,819,298
63										
64	Net Quarterly Developer Cash Flow		(500,000)	-	780,887	1,257,779	639,849	-	1,276,163	604,858

* Beginning Balance included in beginning Pre Existing Developer Balance.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4			Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	0.18	
6	Annual Return on Port Capital Rate	0.1	
7			Qtr 1
8	Amount Available to be Distributed		0
9			
10	Developer Return on Pre-Existing Developer Balance		
11	Beginning Balance*	Quarterly	0
12	Developer Return Accrual	=(1+C5)^(1/4)-1	0
13	Distributions		=MAX(D8,-SUM(D11:D12))
14	Ending Balance		=SUM(D11:D13)
15			
16	Pre Existing Developer Balance		11000000
17	Distribution from Amount Available		=-MIN(D16,-(D8-D13))
18	Distribution from Advances of Port Capital		=-MIN(D16,D53)
19	Ending Balance		=SUM(D16:D18)
20			
21	Horizontal Development Costs		11000000
22	Funded by Developer Capital		=-D46
23	Funded by Remaining Advances of Port Capital		=-(D53+D18)
24	Remaining Horizontal Development Costs		=SUM(D21:D23)
25			
26	Remaining Amount Available to be Distributed		=D8-D13-D17
27			
28	Developer Return		
29	Beginning Balance	Quarterly	0
30	Developer Return Accrual	=(1+C5)^(1/4)-1	0
31	Distributions		=MAX(D26*D33,-SUM(D29:D30))
32	Ending Balance		=SUM(D29:D31)
33	**Pro Rata Developer Return Percentage**		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D29+D30+D45+D46)/(D29+D30+D36+D37+D45+D46+D52+D53))
34			
35	Return on Port Capital		
36	Beginning Balance	Quarterly	0
37	Return on Port Capital Accrual	=(1+C6)^(1/4)-1	0
38	Distributions		=MAX(D26*D40,-SUM(D36:D37))
39	Ending Balance		=SUM(D36:D38)
40	**Pro Rata Port Return Percentage**		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D36+D37+D52+D53)/(D29+D30+D36+D37+D45+D46+D52+D53))
41			
42	Remaining Amount Available to be Distributed		=D26-D31-D38
43			
44	Developer Capital		
45	Beginning Balance		0
46	Developer Capital Contributions		11000000
47	Distributions		=MAX(D42*D49,-SUM(D45:D46))
48	Ending Balance		=SUM(D45:D47)
49	**Pro Rata Developer Capital Percentage**		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D29+D30+D45+D46)/(D29+D30+D36+D37+D45+D46+D52+D53))
50			
51	Port Capital		
52	Beginning Balance		0
53	Advances of Port Capital Contributions		10500000
54	Distributions		=MAX(D42*D56,-SUM(D52:D53))
55	Ending Balance		=SUM(D52:D54)
56	**Pro Rata Port Capital Percentage**		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D36+D37+D52+D53)/(D29+D30+D36+D37+D45+D46+D52+D53))
57			
58	Remaining Amount Available to be Distributed		=D42-D47-D54
59			
60	**Pre Existing Developer Balance**		=D14+D19
61	**Developer Balance**		=D32+D48
62	**Port Balance**		=D39+D55
63			
64	**Net Quarterly Developer Cash Flow**		=-SUM(D13,D17,D18,D31,D46,D47)

* Beginning Balance included in beginning Pre Existing Developer Balance.

Examples are for Illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	E
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 2
8	Amount Available to be Distributed	0
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=D14
12	Developer Return Accrual	=$C12*(E11+E16)
13	Distributions	=MAX(E8,-SUM(E11:E12))
14	Ending Balance	=SUM(E11:E13)
15		
16	Pre Existing Developer Balance	=D19
17	Distribution from Amount Available	=-MIN(E16,-(E8-E13))
18	Distribution from Advances of Port Capital	=-MIN(E16,E53)
19	Ending Balance	=SUM(E16:E18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-E46
23	Funded by Remaining Advances of Port Capital	=-(E53+F18)
24	Remaining Horizontal Development Costs	=SUM(E21:E23)
25		
26	Remaining Amount Available to be Distributed	=E8-E13-E17
27		
28	Developer Return	
29	Beginning Balance	=D32
30	Developer Return Accrual	=$C30*(E29+E45)
31	Distributions	=MAX(E26*E33,-SUM(E29:E30))
32	Ending Balance	=SUM(E29:E31)
33	Pro Rata Developer Return Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E29+E30+E45+E46)/(E29+E30+E36+E37+E45+E46+E52+E53))
34		
35	Return on Port Capital	
36	Beginning Balance	=D39
37	Return on Port Capital Accrual	=$C37*(E36+E52)
38	Distributions	=MAX(E26*E40,-SUM(E36:E37))
39	Ending Balance	=SUM(E36:E38)
40	Pro Rata Port Return Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E36+E37+E52+E53)/(E29+E30+E36+E37+E45+E46+E52+E53))
41		
42	Remaining Amount Available to be Distributed	=E26-E31-E38
43		
44	Developer Capital	
45	Beginning Balance	=D48
46	Developer Capital Contributions	0
47	Distributions	=MAX(E42*E49,-SUM(E45:E46))
48	Ending Balance	=SUM(E45:E47)
49	Pro Rata Developer Capital Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E29+E30+E45+E46)/(E29+E30+E36+E37+E45+E46+E52+E53))
50		
51	Port Capital	
52	Beginning Balance	=D55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(E42*E56,-SUM(E52:E53))
55	Ending Balance	=SUM(E52:E54)
56	Pro Rata Port Capital Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E36+E37+E52+E53)/(E29+E30+E36+E37+E45+E46+E52+E53))
57		
58	Remaining Amount Available to be Distributed	=E42-F47-E54
59		
60	Pre Existing Developer Balance	=E14+E19
61	Developer Balance	=E32+E48
62	Port Balance	=E39+E55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(E13,E17,E18,E31,E46,E47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results

	B	F
4		**Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero**
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 3
8	Amount Available to be Distributed	-1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=E14
12	Developer Return Accrual	=$C12*(F11+F16)
13	Distributions	=MAX(F8,-SUM(F11:F12))
14	Ending Balance	=SUM(F11:F13)
15		
16	Pre Existing Developer Balance	=E19
17	Distribution from Amount Available	=-MIN(F16,-(F8-F13))
18	Distribution from Advances of Port Capital	=-MIN(F16,F53)
19	Ending Balance	=SUM(F16:F18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-F46
23	Funded by Remaining Advances of Port Capital	=-(F53+F18)
24	Remaining Horizontal Development Costs	=SUM(F21:F23)
25		
26	Remaining Amount Available to be Distributed	=F8-F13-F17
27		
28	Developer Return	
29	Beginning Balance	=E32
30	Developer Return Accrual	=$C30*(F29+F45)
31	Distributions	=MAX(F26*F33,-SUM(F29:F30))
32	Ending Balance	=SUM(F29:F31)
33	**Pro Rata Developer Return Percentage**	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F29+F30+F45+F46)/(F29+F30+F36+F37+F45+F46+F52+F53))
34		
35	Return on Port Capital	
36	Beginning Balance	=E39
37	Return on Port Capital Accrual	=$C37*(F36+F52)
38	Distributions	=MAX(F26*F40,-SUM(F36:F37))
39	Ending Balance	=SUM(F36:F38)
40	**Pro Rata Port Return Percentage**	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F36+F37+F52+F53)/(F29+F30+F36+F37+F45+F46+F52+F53))
41		
42	Remaining Amount Available to be Distributed	=F26-F31-F38
43		
44	Developer Capital	
45	Beginning Balance	=E48
46	Developer Capital Contributions	0
47	Distributions	=MAX(F42*F49,-SUM(F45:F46))
48	Ending Balance	=SUM(F45:F47)
49	**Pro Rata Developer Capital Percentage**	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F29+F30+F45+F46)/(F29+F30+F36+F37+F45+F46+F52+F53))
50		
51	Port Capital	
52	Beginning Balance	=E55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(F42*F56,-SUM(F52:F53))
55	Ending Balance	=SUM(F52:F54)
56	**Pro Rata Port Capital Percentage**	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F36+F37+F52+F53)/(F29+F30+F36+F37+F45+F46+F52+F53))
57		
58	Remaining Amount Available to be Distributed	=F42-F47-F54
59		
60	**Pre Existing Developer Balance**	=F14+F19
61	**Developer Balance**	=F32+F48
62	**Port Balance**	=F39+F55
63		
64	**Net Quarterly Developer Cash Flow**	=-SUM(F13,F17,F18,F31,F46,F47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 4
8	Amount Available to be Distributed	-2000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=F14
12	Developer Return Accrual	=$C12*(G11+G16)
13	Distributions	=MAX(G8,-SUM(G11:G12))
14	Ending Balance	=SUM(G11:G13)
15		
16	Pre Existing Developer Balance	=F19
17	Distribution from Amount Available	=-MIN(G16,-(G8-G13))
18	*Distribution from Advances of Port Capital*	*=-MIN(G16,G53)*
19	Ending Balance	=SUM(G16:G18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-G46
23	Funded by Remaining Advances of Port Capital	=-(G53+G18)
24	Remaining Horizontal Development Costs	=SUM(G21:G23)
25		
26	Remaining Amount Available to be Distributed	=G8-G13-G17
27		
28	Developer Return	
29	*Beginning Balance*	*=F32*
30	Developer Return Accrual	=$C30*(G29+G45)
31	Distributions	=MAX(G26*G33,-SUM(G29.G30))
32	Ending Balance	=SUM(G29:G31)
33	**Pro Rata Developer Return Percentage**	**=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G29+G30+G45+G46)/(G29+G30+G36+G37+G45+G46+G52+G53))**
34		
35	Return on Port Capital	
36	Beginning Balance	=F39
37	Return on Port Capital Accrual	=$C37*(G36+G52)
38	Distributions	=MAX(G26*G40,-SUM(G36:G37))
39	Ending Balance	=SUM(G36:G38)
40	**Pro Rata Port Return Percentage**	**=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G36+G37+G52+G53)/(G29+G30+G36+G37+G45+G46+G52+G53))**
41		
42	Remaining Amount Available to be Distributed	=G26-G31-G38
43		
44	Developer Capital	
45	Beginning Balance	=F48
46	Developer Capital Contributions	0
47	Distributions	=MAX(G42*G49,-SUM(G45:G46))
48	Ending Balance	=SUM(G45:G47)
49	**Pro Rata Developer Capital Percentage**	**=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G29+G30+G45+G46)/(G29+G30+G36+G37+G45+G46+G52+G53))**
50		
51	*Port Capital*	
52	Beginning Balance	=F55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(G42*G56,-SUM(G52:G53))
55	Ending Balance	=SUM(G52:G54)
56	**Pro Rata Port Capital Percentage**	**=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G36+G37+G52+G53)/(G29+G30+G36+G37+G45+G46+G52+G53))**
57		
58	Remaining Amount Available to be Distributed	=G42-G47-G54
59		
60	**Pre Existing Developer Balance**	=G14+G19
61	**Developer Balance**	=G32+G48
62	**Port Balance**	=G39+G55
63		
64	**Net Quarterly Developer Cash Flow**	=-SUM(G13,G17,G18,G31,G46,G47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 5
8	Amount Available to be Distributed	-1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=G14
12	Developer Return Accrual	=$C12*(H11+H16)
13	Distributions	=MAX(H8,-SUM(H11:H12))
14	Ending Balance	=SUM(H11:H13)
15		
16	Pre Existing Developer Balance	=G19
17	Distribution from Amount Available	=-MIN(H16,-(H8-H13))
18	Distribution from Advances of Port Capital	=-MIN(H16,H53)
19	Ending Balance	=SUM(H16:H18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-H46
23	Funded by Remaining Advances of Port Capital	=-(H53+H18)
24	Remaining Horizontal Development Costs	=SUM(H21:H23)
25		
26	Remaining Amount Available to be Distributed	=H8-H13-H17
27		
28	Developer Return	
29	Beginning Balance	=G32
30	Developer Return Accrual	=$C30*(H29+H45)
31	Distributions	=MAX(H26*H33,-SUM(H29:H30))
32	Ending Balance	=SUM(H29:H31)
33	Pro Rata Developer Return Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H29+H30+H45+H46)/(H29+H30+H36+H37+H45+H46+H52+H53))
34		
35	Return on Port Capital	
36	Beginning Balance	=G39
37	Return on Port Capital Accrual	=$C37*(H36+H52)
38	Distributions	=MAX(H26*H40,-SUM(H36:H37))
39	Ending Balance	=SUM(H36:H38)
40	Pro Rata Port Return Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H36+H37+H52+H53)/(H29+H30+H36+H37+H45+H46+H52+H53))
41		
42	Remaining Amount Available to be Distributed	=H26-H31-H38
43		
44	Developer Capital	
45	Beginning Balance	=G48
46	Developer Capital Contributions	0
47	Distributions	=MAX(H42*H49,-SUM(H45:H46))
48	Ending Balance	=SUM(H45:H47)
49	Pro Rata Developer Capital Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H29+H30+H45+H46)/(H29+H30+H36+H37+H45+H46+H52+H53))
50		
51	Port Capital	
52	Beginning Balance	=G55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(H42*H56,-SUM(H52:H53))
55	Ending Balance	=SUM(H52:H54)
56	Pro Rata Port Capital Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H36+H37+H52+H53)/(H29+H30+H36+H37+H45+H46+H52+H53))
57		
58	Remaining Amount Available to be Distributed	=H42-H47-H54
59		
60	Pre Existing Developer Balance	=H14+H19
61	Developer Balance	=H32+H48
62	Port Balance	=H39+H55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(H13,H17,H18,H31,H46,H47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 6
8	Amount Available to be Distributed	0
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=H14
12	Developer Return Accrual	=$C12*(I11+I16)
13	Distributions	=MAX(I8,-SUM(I11:I12))
14	Ending Balance	=SUM(I11:I13)
15		
16	Pre Existing Developer Balance	=H19
17	Distribution from Amount Available	=-MIN(I16,-(I8-I13))
18	Distribution from Advances of Port Capital	=-MIN(I16,I53)
19	Ending Balance	=SUM(I16:I18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-I46
23	Funded by Remaining Advances of Port Capital	=-(I53+I18)
24	Remaining Horizontal Development Costs	=SUM(I21:I23)
25		
26	*Remaining Amount Available to be Distributed*	=I8-I13-I17
27		
28	Developer Return	
29	Beginning Balance	=H32
30	Developer Return Accrual	=$C30*(I29+I45)
31	Distributions	=MAX(I26*I33,-SUM(I29:I30))
32	Ending Balance	=SUM(I29:I31)
33	**Pro Rata Developer Return Percentage**	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I29+I30+I45+I46)/(I29+I30+I36+I37+I45+I46+I52+I53))
34		
35	Return on Port Capital	
36	Beginning Balance	=H39
37	Return on Port Capital Accrual	=$C37*(I36+I52)
38	Distributions	=MAX(I26*I40,-SUM(I36:I37))
39	Ending Balance	=SUM(I36:I38)
40	**Pro Rata Port Return Percentage**	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I36+I37+I52+I53)/(I29+I30+I36+I37+I45+I46+I52+I53))
41		
42	Remaining Amount Available to be Distributed	=I26-I31-I38
43		
44	Developer Capital	
45	Beginning Balance	=H48
46	Developer Capital Contributions	0
47	Distributions	=MAX(I42*I49,-SUM(I45:I46))
48	Ending Balance	=SUM(I45:I47)
49	**Pro Rata Developer Capital Percentage**	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I29+I30+I45+I46)/(I29+I30+I36+I37+I45+I46+I52+I53))
50		
51	Port Capital	
52	Beginning Balance	=H55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(I42*I56,-SUM(I52:I53))
55	Ending Balance	=SUM(I52:I54)
56	**Pro Rata Port Capital Percentage**	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I36+I37+I52+I53)/(I29+I30+I36+I37+I45+I46+I52+I53))
57		
58	Remaining Amount Available to be Distributed	=I42-I47-I54
59		
60	**Pre Existing Developer Balance**	=I14+I19
61	**Developer Balance**	=I32+I48
62	**Port Balance**	=I39+I55
63		
64	**Net Quarterly Developer Cash Flow**	=-SUM(I13,I17,I18,I31,I46,I47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 7
8	Amount Available to be Distributed	-2000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=I14
12	Developer Return Accrual	=$C12*(J11+J16)
13	Distributions	=MAX(J8,-SUM(I11:I12))
14	Ending Balance	=SUM(J11:J13)
15		
16	Pre Existing Developer Balance	=I19
17	Distribution from Amount Available	=-MIN(J16,-(J8-J13))
18	Distribution from Advances of Port Capital	=-MIN(J16,J53)
19	Ending Balance	=SUM(J16:J18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-J46
23	Funded by Remaining Advances of Port Capital	=-(J53+I18)
24	Remaining Horizontal Development Costs	=SUM(J21:J23)
25		
26	Remaining Amount Available to be Distributed	=J8-J13-J17
27		
28	Developer Return	
29	Beginning Balance	=I32
30	Developer Return Accrual	=$C30*(J29+J45)
31	Distributions	=MAX(J26*J33,-SUM(J29:J30))
32	Ending Balance	=SUM(J29:J31)
33	Pro Rata Developer Return Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J29+J30+J45+J46)/(J29+J30+J36+J37+J45+J46+J52+J53))
34		
35	Return on Port Capital	
36	Beginning Balance	=I39
37	Return on Port Capital Accrual	=$C37*(J36+J52)
38	Distributions	=MAX(J26*J40,-SUM(J36:J37))
39	Ending Balance	=SUM(J36:J38)
40	Pro Rata Port Return Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J36+J37+J52+J53)/(J29+J30+J36+J37+J45+J46+J52+J53))
41		
42	Remaining Amount Available to be Distributed	=J26-J31-J38
43		
44	Developer Capital	
45	Beginning Balance	=I48
46	Developer Capital Contributions	0
47	Distributions	=MAX(J42*J49,-SUM(J45:J46))
48	Ending Balance	=SUM(J45:J47)
49	Pro Rata Developer Capital Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J29+J30+J45+J46)/(J29+J30+J36+J37+J45+J46+J52+J53))
50		
51	Port Capital	
52	Beginning Balance	=I55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(J42*J56,-SUM(J52:J53))
55	Ending Balance	=SUM(J52:J54)
56	Pro Rata Port Capital Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J36+J37+J52+J53)/(J29+J30+J36+J37+J45+J46+J52+J53))
57		
58	Remaining Amount Available to be Distributed	=J42-J47-J54
59		
60	Pre Existing Developer Balance	=J14+J19
61	Developer Balance	=J32+J48
62	Port Balance	=J39+J55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(J13,J17,J18,J31,J46,J47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 8
8	Amount Available to be Distributed	-1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=J14
12	Developer Return Accrual	=$C12*(K11+K16)
13	Distributions	=MAX(K8,-SUM(K11:K12))
14	Ending Balance	=SUM(K11:K13)
15		
16	Pre Existing Developer Balance	=J19
17	Distribution from Amount Available	=-MIN(K16,-(K8-K13))
18	*Distribution from Advances of Port Capital*	*=-MIN(K16,K53)*
19	Ending Balance	=SUM(K16:K18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-K46
23	Funded by Remaining Advances of Port Capital	=-(K53+K18)
24	Remaining Horizontal Development Costs	=SUM(K21:K23)
25		
26	Remaining Amount Available to be Distributed	=K8-K13-K17
27		
28	Developer Return	
29	Beginning Balance	=J32
30	Developer Return Accrual	=$C30*(K29+K45)
31	Distributions	=MAX(K26*K33,-SUM(K29:K30))
32	Ending Balance	=SUM(K29:K31)
33	**Pro Rata Developer Return Percentage**	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K29+K30+K45+K46)/(K29+K30+K36+K37+K45+K46+K52+K53))
34		
35	Return on Port Capital	
36	Beginning Balance	=J39
37	Return on Port Capital Accrual	=$C37*(K36+K57)
38	Distributions	=MAX(K26*K40,-SUM(K36:K37))
39	Ending Balance	=SUM(K36:K38)
40	**Pro Rata Port Return Percentage**	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K36+K37+K52+K53)/(K29+K30+K36+K37+K45+K46+K52+K53))
41		
42	Remaining Amount Available to be Distributed	=K26-K31-K38
43		
44	Developer Capital	
45	Beginning Balance	=J48
46	Developer Capital Contributions	0
47	Distributions	=MAX(K42*K49,-SUM(K45·K46))
48	Ending Balance	=SUM(K45:K47)
49	**Pro Rata Developer Capital Percentage**	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K29+K30+K45+K46)/(K29+K30+K36+K37+K45+K46+K52+K53))
50		
51	Port Capital	
52	Beginning Balance	=J55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(K42*K56,-SUM(K52:K53))
55	Ending Balance	=SUM(K52:K54)
56	**Pro Rata Port Capital Percentage**	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K36+K37+K52+K53)/(K29+K30+K36+K37+K45+K46+K52+K53))
57		
58	Remaining Amount Available to be Distributed	=K42-K47-K54
59		
60	**Pre Existing Developer Balance**	=K14+K19
61	**Developer Balance**	=K32+K48
62	**Port Balance**	*=K39+K55*
63		
64	**Net Quarterly Developer Cash Flow**	=-SUM(K13,K17,K18,K31,K46,K47)

* Beginning Balance included in beginning Pre Existing Develo|

FP SCHEDULE 7

Sample Shoreline Reserve/Project Reserve Division of Funds

[see attached]

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
4	**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction**									
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	75%								
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	50%								
7										
8			**Qtr 1**	**Qtr 2**	**Qtr 3**	**Qtr 4**	**Qtr 5**	**Qtr 6**	**Qtr 7**	**Qtr 8**
9	Shoreline CFD Tax*		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*500,000*	*500,000*	*500,000*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*250,000*	*250,000*	*250,000*	*250.000*	*250,000*	*500,000*	*500,000*	*500,000*
12										
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		750,000	1,500,000	2,250,000	3,000,000	3,750,000	3,000,000	3,500,000	4,000,000
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**		-	-	-	-	(1,250,000)	-	-	-
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		NA	NA	NA	NA	-	-	-	-
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**750,000**	**1,500,000**	**2,250,000**	**3,000,000**	**2,500,000**	**3,000,000**	**3,500,000**	**4,000,000**
17										
18	**Beginning Shoreline Reserve Balance**		250,000	500,000	750,000	1,000,000	1,250,000	3,000,000	3,500,000	4,000,000
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		-	-	-	-	1,250,000	-	-	-
20	**Ending Shoreline Reserve Balance**		**250,000**	**500,000**	**750,000**	**1,000,000**	**2,500,000**	**3,000,000**	**3,500,000**	**4,000,000**
21										
22	Phase Satisfaction Achieved at End of Quarter		NA	NA	NA	NA	Yes	Yes	Yes	Yes
23	Amount Required to Reach Phase Satisfaction		NA	NA	NA	NA	-	-	-	-

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4			**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	0.75	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	0.5	
7			
8			**Qtr 1**
9	Shoreline CFD Tax*		1000000
10	Amount of Shoreline CFD Tax Allocated to Project Reserve**		=IF(OR(D22="NA",D22="No"),$C$5*D9,IF(AND(C22="NA",D22="Yes"),$C$5*D9,IF(D22="Yes",$C$6*D9,0)))
11	Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**		=D9-D10
12			
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		=C16+D10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**		=-IF(AND(C22="NA",D22="Yes"),MAX(D13*($C$5-$C$6)/$C$5-D23,0),IF(D22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		=IFERROR(MAX(-D13,-D23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**=SUM(D13:D15)**
17			
18	**Beginning Shoreline Reserve Balance**		=C20+D11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		=-D14
20	**Ending Shoreline Reserve Balance**		**=SUM(D18:D19)**
21			
22	Phase Satisfaction Achieved at End of Quarter		NA
23	Amount Required to Reach Phase Satisfaction		NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	E
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 2**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(E22="NA",E22="No"),$C$5*E9,IF(AND(D22="NA",E22="Yes"),$C$5*E9,IF(E22="Yes",$C$6*E9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=E9-E10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=D16+E10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(D22="NA",E22="Yes"),MAX(E13*($C$5-$C$6)/$C$5-E23,0),IF(E22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-E13,-E23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(E13:E15)**
17		
18	**Beginning Shoreline Reserve Balance**	=D20+E11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-E14
20	**Ending Shoreline Reserve Balance**	**=SUM(E18:E19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	F
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 3**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(F22="NA",F22="No"),$C$5*F9,IF(AND(E22="NA",F22="Yes"),$C$5*F9,IF(F22="Yes",$C$6*F9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=F9-F10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=E16+F10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(E22="NA",F22="Yes"),MAX(F13*($C$5-$C$6)/$C$5-F23,0),IF(F22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-F13,-F23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(F13:F15)**
17		
18	**Beginning Shoreline Reserve Balance**	=E20+F11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-F14
20	**Ending Shoreline Reserve Balance**	**=SUM(F18:F19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 4**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(G22="NA",G22="No"),$C$5*G9.IF(AND(F22="NA",G22="Yes"),$C$5*G9,IF(G22="Yes",$C$6*G9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=G9-G10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=F16+G10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(F22="NA",G22="Yes"),MAX(G13*($C$5-$C$6)/$C$5-G23,0),IF(G22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-G13,-G23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(G13:G15)**
17		
18	**Beginning Shoreline Reserve Balance**	=F20+G11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-G14
20	**Ending Shoreline Reserve Balance**	**=SUM(G18:G19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 5**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(H22="NA",H22="No"),$C$5*H9,IF(AND(G22="NA",H22="Yes"),$C$5*H9,IF(H22="Yes",$C$6*H9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=H9-H10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=G16+H10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(G22="NA",H22="Yes"),MAX(H13*($C$5-$C$6)/$C$5-H23,0),IF(H22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-H13,-H23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(H13:H15)**
17		
18	**Beginning Shoreline Reserve Balance**	=G20+H11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-H14
20	**Ending Shoreline Reserve Balance**	**=SUM(H18:H19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		**Qtr 6**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	=IF(OR(I22="NA",I22="No"),$C$5*I9,IF(AND(H22="NA",I22="Yes"),$C$5*I9,IF(I22="Yes",$C$6*I9,0)))
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	=I9-I10
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=H16+I10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(H22="NA",I22="Yes"),MAX(I13*($C$5-$C$6)/$C$5-I23,0),IF(I22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-I13,-I23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(I13:I15)**
17		
18	**Beginning Shoreline Reserve Balance**	=H20+I11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-I14
20	**Ending Shoreline Reserve Balance**	**=SUM(I18:I19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 7**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(J22="NA",J22="No"),$C$5*J9,IF(AND(I22="NA",J22="Yes"),$C$5*J9,IF(J22="Yes",$C$6*J9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=J9-J10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=I16+J10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(I22="NA",J22="Yes"),MAX(J13*($C$5-$C$6)/$C$5-J23,0),IF(J22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-J13,-J23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(J13:J15)**
17		
18	**Beginning Shoreline Reserve Balance**	=I20+J11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-J14
20	**Ending Shoreline Reserve Balance**	**=SUM(J18:J19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	*Amount Required to Reach Phase Satisfaction*	*0*

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 8**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(K22="NA",K22="No"),$C$5*K9,IF(AND(J22="NA",K22="Yes"),$C$5*K9,IF(K22="Yes",$C$6*K9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=K9-K10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=J16+K10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(J22="NA",K22="Yes"),MAX(K13*($C$5-$C$6)/$C$5-K23,0),IF(K22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-K13,-K23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(K13:K15)**
17		
18	**Beginning Shoreline Reserve Balance**	=J20+K11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-K14
20	**Ending Shoreline Reserve Balance**	**=SUM(K18:K19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
4	**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction**									
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	75%								
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	50%								
7										
8			**Qtr 1**	**Qtr 2**	**Qtr 3**	**Qtr 4**	**Qtr 5**	**Qtr 6**	**Qtr 7**	**Qtr 8**
9	Shoreline CFD Tax*		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*500,000*	*500,000*	*500,000*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*500,000*	*500,000*	*500,000*
12										
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		750,000	1,500,000	2,250,000	3,000,000	3,750,000	3,000,000	3,500,000	4,000,000
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**		-	-	-	-	(750,000)	-	-	-
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		NA	NA	NA	NA	(500,000)	-	-	-
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**750,000**	**1,500,000**	**2,250,000**	**3,000,000**	**2,500,000**	**3,000,000**	**3,500,000**	**4,000,000**
17										
18	**Beginning Shoreline Reserve Balance**		250,000	500,000	750,000	1,000,000	1,250,000	2,500,000	3,000,000	3,500,000
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		-	-	-	-	750,000	-	-	-
20	**Ending Shoreline Reserve Balance**		**250,000**	**500,000**	**750,000**	**1,000,000**	**2,000,000**	**2,500,000**	**3,000,000**	**3,500,000**
21										
22	Phase Satisfaction Achieved at End of Quarter		NA	NA	NA	NA	Yes	Yes	Yes	Yes
23	Amount Required to Reach Phase Satisfaction		NA	NA	NA	NA	500,000	-	-	-

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated These are not actual results.

	B	C	D
4			**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	0.75	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	0.5	
7			
8			**Qtr 1**
9	Shoreline CFD Tax*		1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*=IF(OR(D22="NA",D22="No"),$C$5*D9,IF(AND(C22="NA",D22="Yes"),$C$5*D9,IF(D22="Yes",$C$6*D9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*=D9-D10*
12			
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		=C16+D10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**		=-IF(AND(C22="NA",D22="Yes"),MAX(D13*($C$5-$C$6)/$C$5-D23,0),IF(D22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		=IFERROR(MAX(-D13,-D23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**=SUM(D13.D15)**
17			
18	**Beginning Shoreline Reserve Balance**		=C20+D11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		=-D14
20	**Ending Shoreline Reserve Balance**		**=SUM(D18:D19)**
21			
22	Phase Satisfaction Achieved at End of Quarter		**NA**
23	Amount Required to Reach Phase Satisfaction		**NA**

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated These are not actual results.

	B	E
4		Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		Qtr 2
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(F22="NA",F22="No"),$C$5*E9,IF(AND(D22="NA",E22="Yes"),$C$5*E9,IF(E22="Yes",$C$6*E9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=E9-E10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=D16+E10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**	=-IF(AND(D22="NA",E22="Yes"),MAX(E13*($C$5-$C$6)/$C$5-E23,0),IF(E22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-E13,-E23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(E13:E15)
17		
18	**Beginning Shoreline Reserve Balance**	=D20+E11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-E14
20	**Ending Shoreline Reserve Balance**	=SUM(E18:E19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	F
4		**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 3**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(F22="NA",F22="No"),$C$5*F9,IF(AND(E22="NA",F22="Yes"),$C$5*F9,IF(F22="Yes",$C$6*F9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=F9-F10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=E16+F10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**	=-IF(AND(E22="NA",F22="Yes"),MAX(F13*($C$5-$C$6)/$C$5-F23,0),IF(F22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-F13,-F23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(F13:F15)
17		
18	**Beginning Shoreline Reserve Balance**	=E20+F11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-F14
20	**Ending Shoreline Reserve Balance**	=SUM(F18:F19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

*** Phase Audit Completed at End of Q4*

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated These are not actual results.

	B	G
4		**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 4**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(G22="NA",G22="No"),$C$5*G9,IF(AND(F22="NA",G22="Yes"),$C$5*G9,IF(G22="Yes",$C$6*G9,0))).*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=G9-G10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=F16+G10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**	=-IF(AND(F22="NA",G22="Yes"),MAX(G13*($C$5-$C$6)/$C$5-G23,0),IF(G22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-G13,-G23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(G13:G15)
17		
18	**Beginning Shoreline Reserve Balance**	=F20+G11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-G14
20	**Ending Shoreline Reserve Balance**	=SUM(G18:G19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated These are not actual results.

	B	H
4		**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		**Qtr 5**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(H22="NA",H22="No"),$C$5*H9,IF(AND(G22="NA",H22="Yes"),$C$5*H9,IF(H22="Yes",$C$6*H9,0)),*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=H9-H10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=G16+H10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**	=-IF(AND(G22="NA",H22="Yes"),MAX(H13*($C$5-$C$6)/$C$5-H23,0),IF(H22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-H13,-H23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(H13:H15)
17		
18	**Beginning Shoreline Reserve Balance**	=G20+H11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-H14
20	**Ending Shoreline Reserve Balance**	=SUM(H18:H19)
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	500000

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 6**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(I22="NA",I22="No"),$C$5*I9,IF(AND(H22="NA",I22="Yes"),$C$5*I9,IF(I22="Yes",$C$6*I9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=I9-I10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=H16+I10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**	=-IF(AND(H22="NA",I22="Yes"),MAX(I13*($C$5 $C$6)/$C$5-I23,0),IF(I22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-I13,-I23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(I13:I15)
17		
18	**Beginning Shoreline Reserve Balance**	=H20+I11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-I14
20	**Ending Shoreline Reserve Balance**	=SUM(I18:I19)
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 7**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(J22="NA",J22="No"),$C$5*J9,IF(AND(I22="NA",J22="Yes"),$C$5*J9,IF(J22="Yes",$C$6*J9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=J9-J10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=I16+J10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**	=-IF(AND(I22="NA",J22="Yes"),MAX(J13*($C$5-$C$6)/$C$5-J23,0),IF(J22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-J13,-J23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(J13:J15)**
17		
18	**Beginning Shoreline Reserve Balance**	=I20+J11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-J14
20	**Ending Shoreline Reserve Balance**	**=SUM(J18:J19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated These are not actual results.

	B	K
4		**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 8
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(K22="NA".K22="No"),$C$5*K9,IF(AND(J22="NA".K22="Yes"),$C$5*K9,IF(K22="Yes".$C$6*K9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=K9-K10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=J16+K10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)	=-IF(AND(J22="NA",K22="Yes ').MAX(K13*($C$5-$C$6)/$C$5-K23,0),IF(K22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-K13,-K23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(K13:K15)**
17		
18	**Beginning Shoreline Reserve Balance**	=J20+K11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-K14
20	**Ending Shoreline Reserve Balance**	**=SUM(K18:K19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
4	**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction**									
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	75%								
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	50%								
7										
8			**Qtr 1**	**Qtr 2**	**Qtr 3**	**Qtr 4**	**Qtr 5**	**Qtr 6**	**Qtr 7**	**Qtr 8**
9	Shoreline CFD Tax*		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*500,000*	*500,000*	*500,000*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*500,000*	*500,000*	*500,000*
12										
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		750,000	1,500,000	2,250,000	3,000,000	3,750,000	2,750,000	3,250,000	3,750,000
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**		-	-	-	-	-	-	-	-
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		NA	NA	NA	NA	(1,500,000)	-	-	-
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**750,000**	**1,500,000**	**2,250,000**	**3,000,000**	**2,250,000**	**2,750,000**	**3,250,000**	**3,750,000**
17										
18	**Beginning Shoreline Reserve Balance**		250,000	500,000	750,000	1,000,000	1,250,000	1,750,000	2,250,000	2,750,000
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		-	-	-	-	-	-	-	-
20	**Ending Shoreline Reserve Balance**		**250,000**	**500,000**	**750,000**	**1,000,000**	**1,250,000**	**1,750,000**	**2,250,000**	**2,750,000**
21										
22	Phase Satisfaction Achieved at End of Quarter		NA	NA	NA	NA	Yes	Yes	Yes	Yes
23	Amount Required to Reach Phase Satisfaction		NA	NA	NA	NA	1,500,000	-	-	-

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4			**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieve	0.75	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieve	0.5	
7			
8			**Qtr 1**
9	Shoreline CFD Tax*		1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*IF(OR(D22="NA",D22="No"),$C$5*D9,IF(AND(C22="NA",D22="Yes"),$C$5*D9,IF(D22="Yes",$C$6*D9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*=D9-D10*
12			
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		=C16+D10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**		=-IF(AND(C22="NA",D22="Yes"),MAX(D13*($C$5-$C$6)/$C$5-D23,0),IF(D22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		IFERROR(MAX(-D13,-D23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		=SUM(D13:D15)
17			
18	**Beginning Shoreline Reserve Balance**		=C20+D11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		=-D14
20	**Ending Shoreline Reserve Balance**		=SUM(D18:D19)
21			
22	Phase Satisfaction Achieved at End of Quarter		NA
23	Amount Required to Reach Phase Satisfaction		NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	
4		**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**	
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieve		
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieve		
7			
8			**Qtr 2**
9	Shoreline CFD Tax*	1000000	
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(F22="NA",F22="No"),$C$5*E9,IF(AND(D22="NA",E22="Yes"),$C$5*F9,IF(F22="Yes",$C$6*F9,0)))*	
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=E9-E10*	
12			
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=D16-E10	
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(D22="NA",E22="Yes"),MAX(E13*($C$5-$C$6)/$C$5-E23,0),IF(E22="NA",0))	
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-E13,-E23),"NA")	
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(E13:E15)	
17			
18	**Beginning Shoreline Reserve Balance**	=D20+E11	
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-F14	
20	**Ending Shoreline Reserve Balance**	=SUM(E18:E19)	
21			
22	Phase Satisfaction Achieved at End of Quarter		NA
23	Amount Required to Reach Phase Satisfaction		NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results

	B	F
4		**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		**Qtr 3**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(F22="NA",F22="No"),$C$5*F9,IF(AND(F22="NA",F22="Yes"),$C$5*F9,IF(F22="Yes",$C$6*F9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=F9-F10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=E16+F10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**	=-IF(AND(F22="NA",F22="Yes"),MAX(F13*($C$5-$C$6)/$C$5-F23,0),IF(F22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-F13,-F23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(F13:F15)
17		
18	**Beginning Shoreline Reserve Balance**	=E20+F11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-F14
20	**Ending Shoreline Reserve Balance**	=SUM(F18:F19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
1		**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		**Qtr 4**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(G22 "NA",G22="No"),$C$5*G9,IF(AND(F22="NA",G22="Yes"),$C$5*G9,IF(G22="Yes",$C$6*G9,0))),*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=G9-G10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=F16+G10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**	=-IF(AND(F22 "NA",G22="Yes"),MAX(G13*($C$5-$C$6)/$C$5-G23,0),IF(G22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-G13,-G23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(G13 G15)**
17		
18	**Beginning Shoreline Reserve Balance**	=F20+G11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-G14
20	**Ending Shoreline Reserve Balance**	**=SUM(G18:G19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	**NA**
23	Amount Required to Reach Phase Satisfaction	**NA**

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 5
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(H22="NA",H22="No"),$C$5*H9,IF(AND(G22="NA",H22="Yes"),$C$5*H9,IF(H22="Yes",$C$6*H9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=H9-H10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=G16+H10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**	=-IF(AND(G22="NA",H22="Yes"),MAX(H13*($C$5-$C$6)/$C$5-H23,0),IF(H22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-H13,-H23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(H13:H15)**
17		
18	**Beginning Shoreline Reserve Balance**	=G20+H11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-H14
20	**Ending Shoreline Reserve Balance**	**=SUM(H18:H19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	1500000

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B		I
4		Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas	
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieve		
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieve		
7			
8			Qtr 6
9	Shoreline CFD Tax*	1000000	
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	=IF(OR(I22="NA",I22="No"),$C$5*I9,IF(AND(H22<>"NA",I22="Yes"),$C$5*I9,IF(I22="Yes",$C$6*I9,0)));	
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	=I9-I10	
12			
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=H16+I10	
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**	=-IF(AND(H22="NA",I22="Yes"),MAX(I13*($C$5-$C$6)/$C$5-I23,0),IF(I22="NA",0))	
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-I13, I23),"NA")	
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(I13:I15)	
17			
18	**Beginning Shoreline Reserve Balance**	=H20+I11	
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-I14	
20	**Ending Shoreline Reserve Balance**	=SUM(I18:I19)	
21			
22	Phase Satisfaction Achieved at End of Quarter		Yes
23	Amount Required to Reach Phase Satisfaction	0	

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I	J
4		**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**	
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved		
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieve		
7			
8			**Qtr 7**
9	Shoreline CFD Tax*	1000000	
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(I22="NA",J22="No"),$C$5*I9,IF(AND(I22="NA",J22="Yes"),$C$5*I9,IF(I22="Yes",$C$6*I9,0)))*	
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=I9-I10*	
12			
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=I16+I10	
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**	=-IF(AND(I22="NA",J22="Yes"),MAX(J13*($C$5-$C$6)/$C$5-J23,0),IF(I22="NA",0))	
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-J13,-J23),"NA")	
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(J13:J15)	
17			
18	**Beginning Shoreline Reserve Balance**	=I20+I11	
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-J14	
20	**Ending Shoreline Reserve Balance**	=SUM(J18:J19)	
21			
22	Phase Satisfaction Achieved at End of Quarter		Yes
23	Amount Required to Reach Phase Satisfaction	0	

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieves	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieve	
7		
8		**Qtr 8**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	`=IF(OR(K22="NA",K22="No"),$C$5*K9,IF(AND(J22="NA",K22="Yes"),$C$5*K9,IF(K22="Yes",$C$6*K9,0)))`
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	`=K9-K10`
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	`=J16+K10`
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**	`=IF(AND(J22="NA",K22="Yes"),MAX(K13*($C$5-$C$6)/$C$5-K23,0),IF(K22="NA",0))`
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	`=IFERROR(MAX(-K13,-K23),"NA")`
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(K13:K15)**
17		
18	**Beginning Shoreline Reserve Balance**	`=J20+K11`
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	`=-K14`
20	**Ending Shoreline Reserve Balance**	**=SUM(K18:K19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfactio	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
4	**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction**									
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	75%								
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	50%								
7										
8			**Qtr 1**	**Qtr 2**	**Qtr 3**	**Qtr 4**	**Qtr 5**	**Qtr 6**	**Qtr 7**	**Qtr 8**
9	Shoreline CFD Tax*		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*750,000*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*250,000*
12										
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****		750,000	1,500,000	2,250,000	3,000,000	3,750,000	750,000	1,500,000	2,250,000
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**		-	-	-	-	-	-	-	-
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		NA	NA	NA	NA	(3,750,000)	-	-	-
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**750,000**	**1,500,000**	**2,250,000**	**3,000,000**	**-**	**750,000**	**1,500,000**	**2,250,000**
17										
18	**Beginning Shoreline Reserve Balance**		250,000	500,000	750,000	1,000,000	1,250,000	1,500,000	1,750,000	2,000,000
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		-	-	-	-	-	-	-	-
20	**Ending Shoreline Reserve Balance**		**250,000**	**500,000**	**750,000**	**1,000,000**	**1,250,000**	**1,500,000**	**1,750,000**	**2,000,000**
21										
22	Phase Satisfaction Achieved at End of Quarter		NA	NA	NA	NA	No	No	No	No
23	Amount Required to Reach Phase Satisfaction		NA	NA	NA	NA	10,000,000	-	-	-

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated These are not actual results.

	B	C	D
4			**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	0.75	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	0.5	
7			
8			**Qtr 1**
9	Shoreline CFD Tax*		1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		=IF(OR(D22="NA",D22="No"),$C$5*D9,IF(AND(C22="NA",D22="Yes"),$C$5*D9,IF(D22="Yes",$C$6*D9,0)))
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		=D9-D10
12			
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****		=C16+D10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**		=-IF(AND(C22="NA",D22="Yes"),MAX(D13*($C$5-$C$6)/$C$5-D23,0),IF(D22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		=IFERROR(MAX(-D13,-D23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		=SUM(D13:D15)
17			
18	**Beginning Shoreline Reserve Balance**		=C20+D11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		=-D14
20	**Ending Shoreline Reserve Balance**		=SUM(D18:D19)
21			
22	Phase Satisfaction Achieved at End of Quarter		NA
23	Amount Required to Reach Phase Satisfaction		NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	E
4		Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		Qtr 2
9	Shoreline CFD Tax*	1000000
10	Amount of Shoreline CFD Tax Allocated to Project Reserve**	=IF(OR(E22="NA",E22="No"),$C$5*E9,IF(AND(D22="NA",E22="Yes"),$C$5*E9,IF(E22="Yes",$C$6*E9,0)))
11	Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**	=E9-E10
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction***	=D16+E10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)	=-IF(AND(D22="NA",E22="Yes"),MAX(E13*($C$5-$C$6)/$C$5-E23,0),IF(E22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-E13,-E23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(E13:E15)
17		
18	Beginning Shoreline Reserve Balance	=D20+E11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-E14
20	Ending Shoreline Reserve Balance	=SUM(E18:E19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	F
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 3**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(F22="NA",F22="No"),$C$5*F9,IF(AND(E22="NA",F22="Yes"),$C$5*F9,IF(F22="Yes",$C$6*F9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=F9-F10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	=E16+F10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(E22="NA",F22="Yes"),MAX(F13*($C$5-$C$6)/$C$5-F23,0),IF(F22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-F13,-F23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(F13:F15)
17		
18	**Beginning Shoreline Reserve Balance**	=E20+F11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-F14
20	**Ending Shoreline Reserve Balance**	=SUM(F18:F19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	**Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved**	
6	**Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved**	
7		
8		**Qtr 4**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(G22="NA",G22="No"),$C$5*G9,IF(AND(F22="NA",G22="Yes"),$C$5*G9,IF(G22="Yes",$C$6*G9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=G9-G10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	=F16+G10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(F22="NA",G22="Yes"),MAX(G13*($C$5-$C$6)/$C$5-G23,0),IF(G22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-G13,-G23),"NA')
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(G13:G15)**
17		
18	**Beginning Shoreline Reserve Balance**	=F20+G11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-G14
20	**Ending Shoreline Reserve Balance**	**=SUM(G18:G19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	*Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved*	
7		
8		**Qtr 5**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(H22="NA",H22="No"),$C$5*H9,IF(AND(G22<>"NA",H22="Yes"),$C$5*H9,IF(H22="Yes",$C$6*H9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=H9-H10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	=G16+H10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(G22="NA",H22="Yes"),MAX(H13*($C$5-$C$6)/$C$5-H23,0),IF(H22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-H13,-H23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(H13:H15)**
17		
18	**Beginning Shoreline Reserve Balance**	=G20+H11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-H14
20	**Ending Shoreline Reserve Balance**	**=SUM(H18:H19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	No
23	Amount Required to Reach Phase Satisfaction	10000000

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I	
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**	
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved		
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved		
7			
8			**Qtr 6**
9	Shoreline CFD Tax*	1000000	
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(I22="NA",I22="No"),$C$5*I9,IF(AND(H22="NA",I22="Yes"),$C$5*I9,IF(I22="Yes",$C$6*I9,0)))*	
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=I9-I10*	
12			
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	=H16+I10	
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(H22="NA",I22="Yes"),MAX(I13*($C$5-$C$6)/$C$5-I23,0),IF(I22<"NA",0))	
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-I13,-I23),"NA")	
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(I13:I15)**	
17			
18	**Beginning Shoreline Reserve Balance**	=H20+I11	
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-I14	
20	**Ending Shoreline Reserve Balance**	**=SUM(I18:I19)**	
21			
22	Phase Satisfaction Achieved at End of Quarter		No
23	Amount Required to Reach Phase Satisfaction	0	

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 7**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(J22="NA",J22="No"),$C$5*J9,IF(AND(I22="NA",J22="Yes"),$C$5*I9,IF(J22="Yes",$C$6*J9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=J9-J10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	=I16+J10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(I22="NA",J22="Yes"),MAX(J13*($C$5-$C$6)/$C$5-J23,0),IF(J22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-J13,-J23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(J13:J15)**
17		
18	**Beginning Shoreline Reserve Balance**	=I20+J11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-J14
20	**Ending Shoreline Reserve Balance**	**=SUM(J18:J19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	No
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 8**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(K22="NA",K22="No"),$C$5*K9,IF(AND(J22="NA",K22="Yes"),$C$5*K9,IF(K22="Yes",$C$6*K9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=K9-K10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	=J16+K10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(J22="NA",K22="Yes"),MAX(K13*($C$5-$C$6)/$C$5-K23,0),IF(K22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-K13,-K23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(K13:K15)
17		
18	**Beginning Shoreline Reserve Balance**	=J20+K11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-K14
20	**Ending Shoreline Reserve Balance**	=SUM(K18:K19)
21		
22	Phase Satisfaction Achieved at End of Quarter	No
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

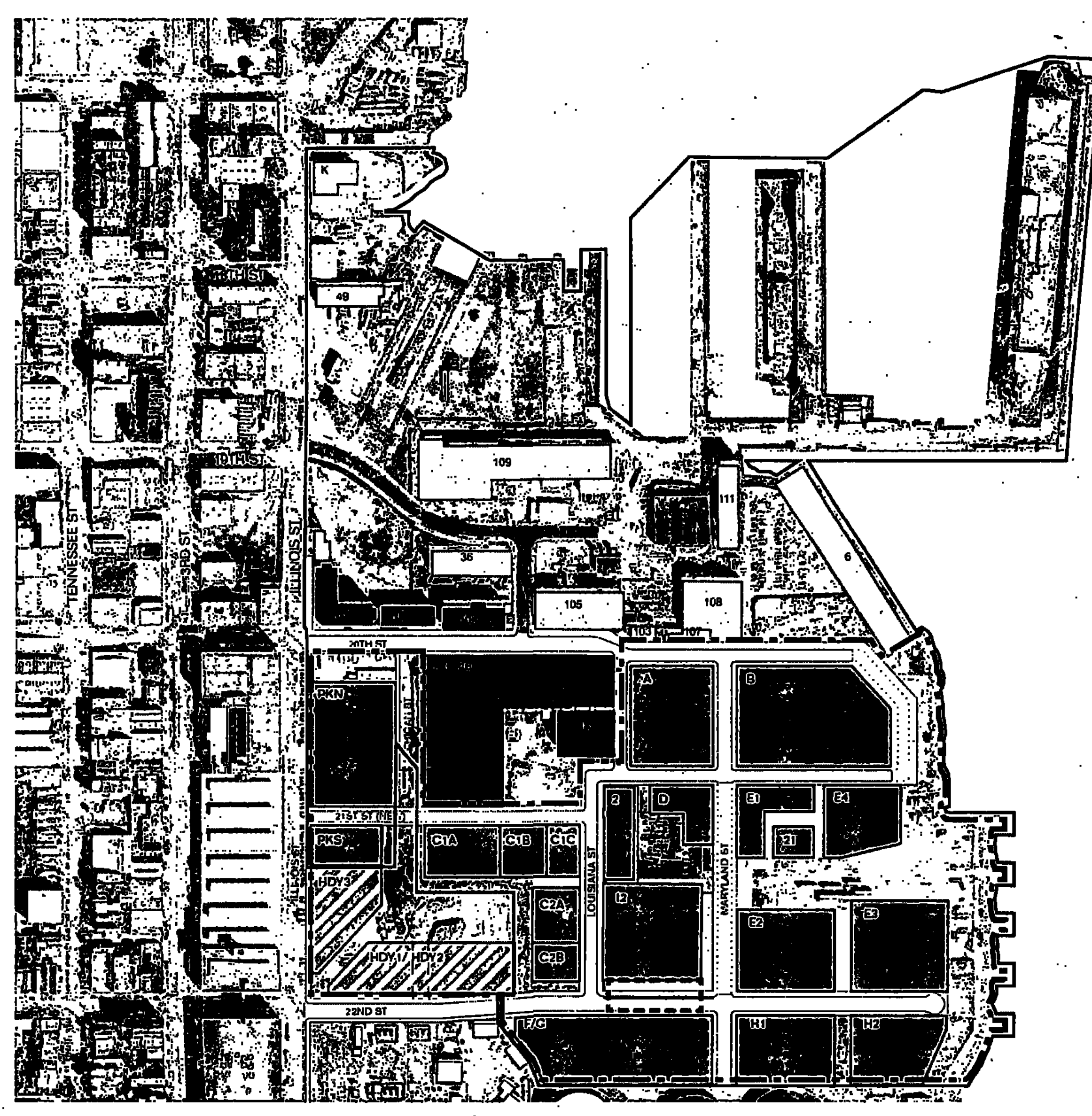
** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

FP Maps: Pier 70 SUD Public Financing Districts

MAP 1



PIER 70 SUD
IFD/IRFD BOUNDARY

SITELAB urban studio 05/01/18

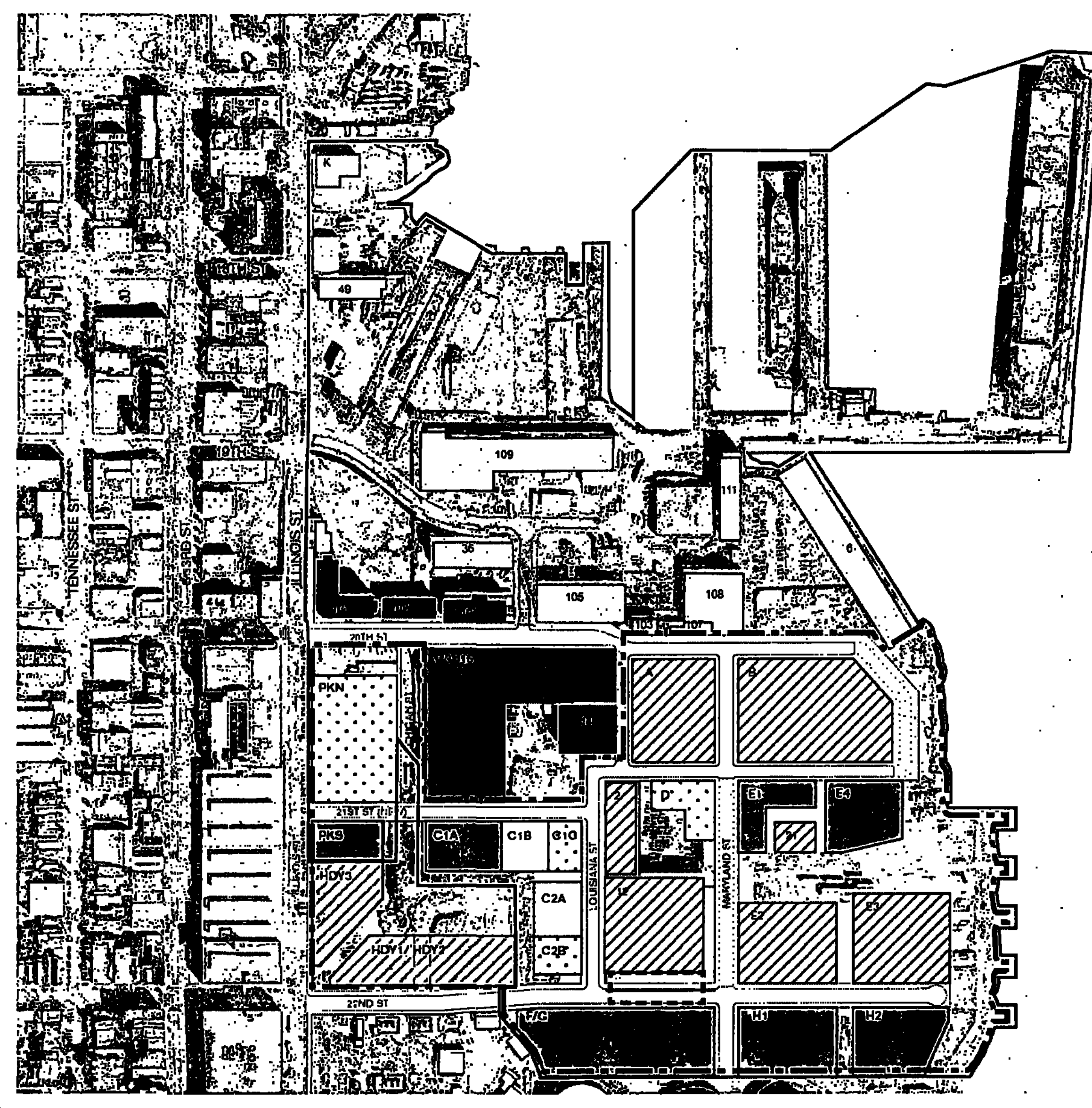
IFD/IRFD BOUNDARY

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD

- IFD Area G-1
- Hoedown Yard IRFD
- IFD Area G2-4

FP Maps: Pier 70 SUD Public Financing Districts

MAP 2



PIER 70 SUD

CFD TAX AREAS

SITELAB urban studio 05/01/18

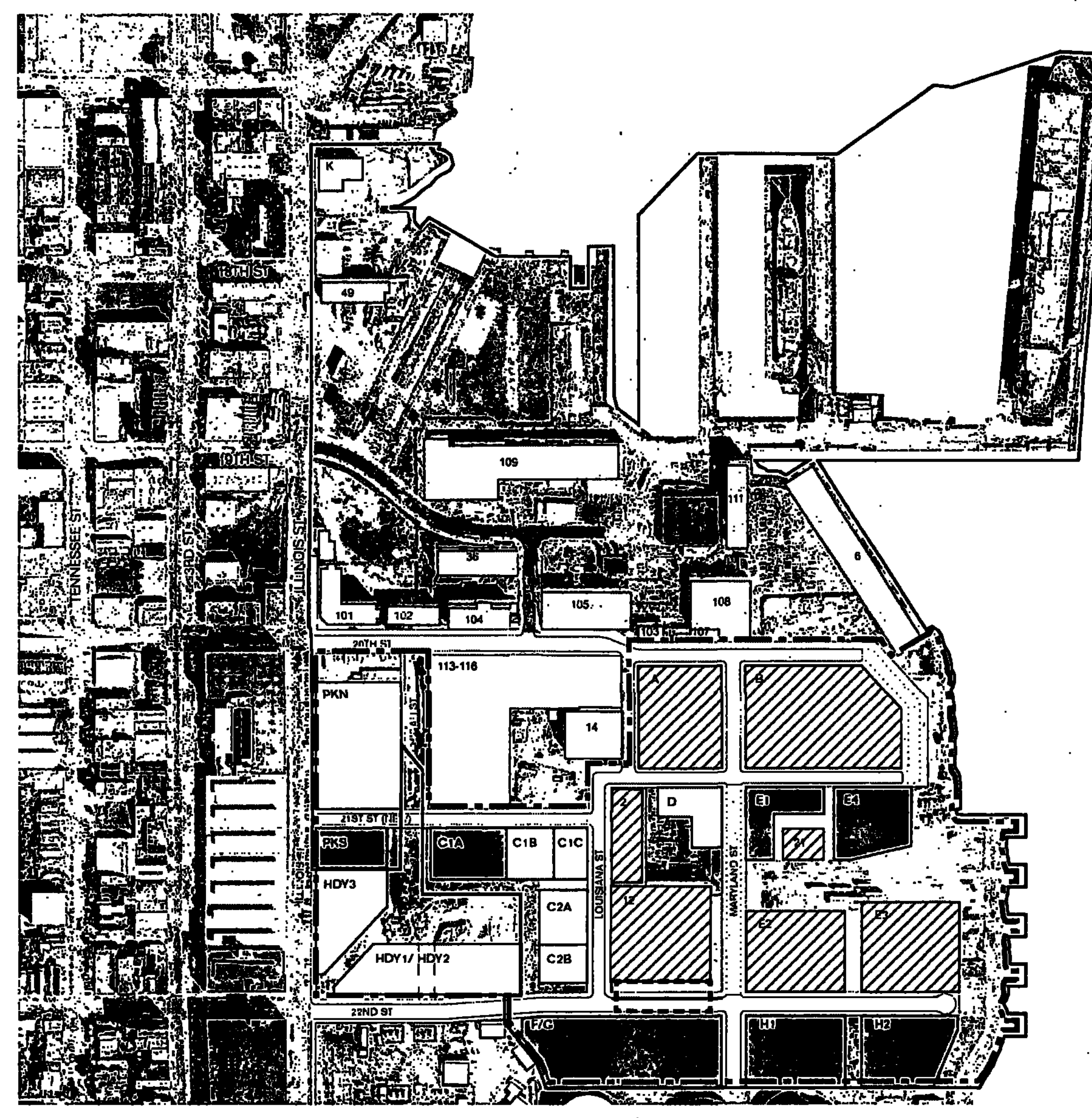
CFD TAX AREAS

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD

- Hoedown Yard CFD
- Pier 70 (Condo) CFD
- Future Annexation Area (Condo and/or Leased)
- Pier 70 (Leased Property) CFD
- 20th Street Historic Core CFD

FP Maps: Pier 70 SUD Public Financing Districts

MAP 3



PIER 70 SUD

PIER 70 (LEASED PROPERTY) CFD

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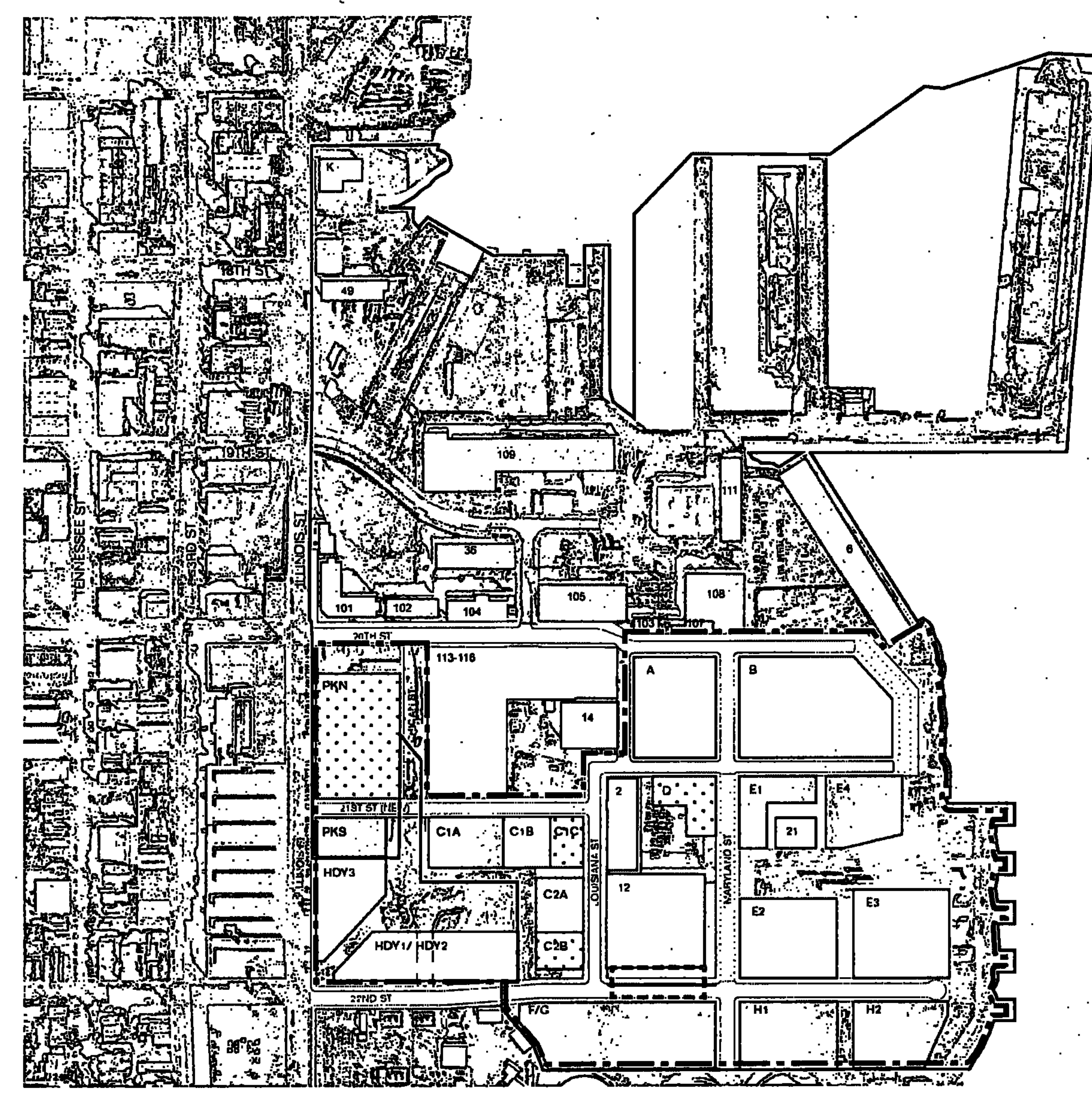
PIER 70 (NOI PROPERTY) CFD

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD
- PIER 70 (Leased Property) CFD
- Future Annexation Area (Condo and/or Leased)

FP Maps: Pier 70 SUD Public Financing Districts

MAP 4



PIER 70 SUD

PIER 70 (CONDO) CFD

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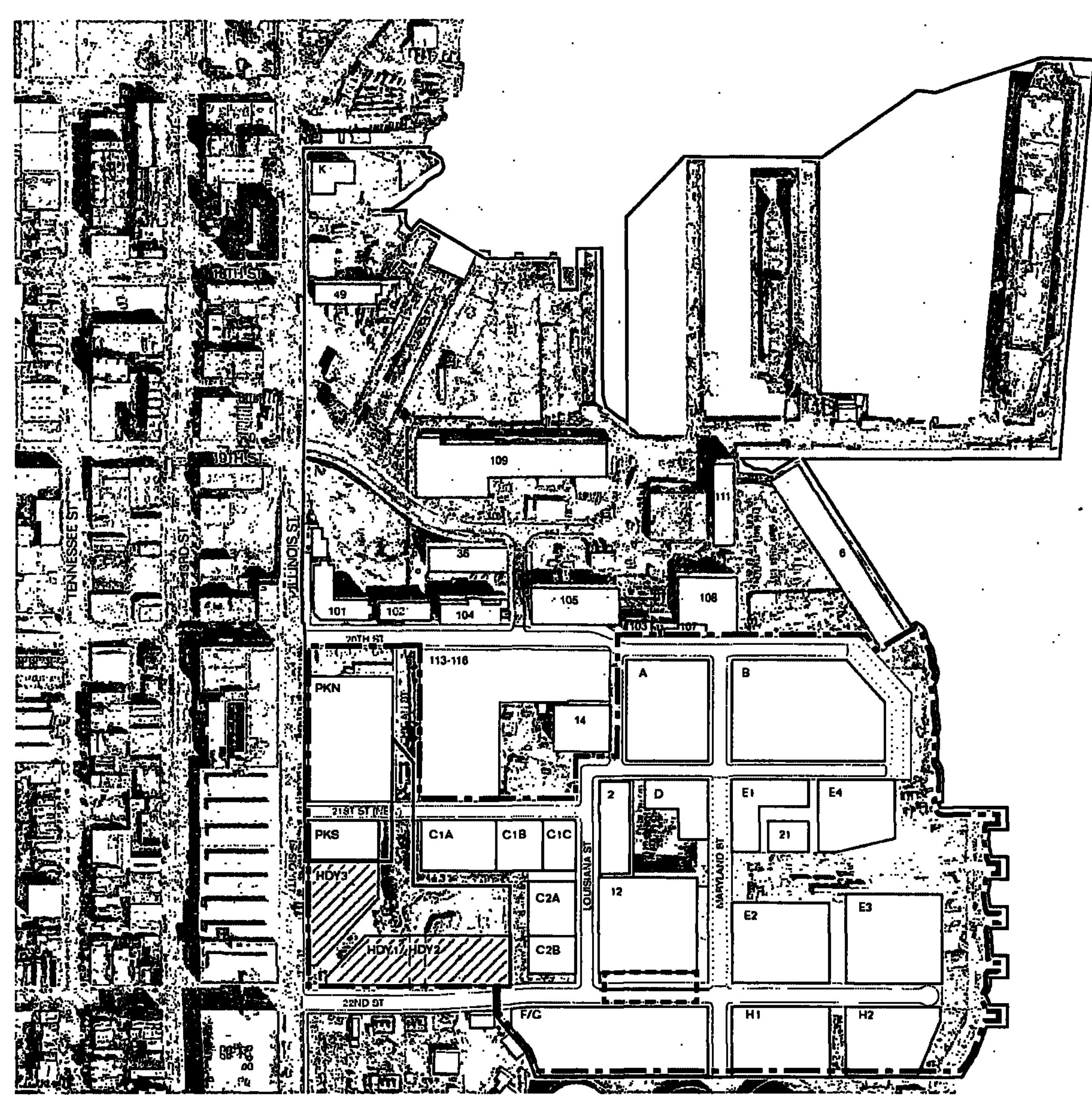
PIER 70 (CONDO) CFD

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD
- PIER 70 (Condo) CFD
- Future Annexation Area (Condo and/or Leased)

FP Maps: Pier 70 SUD Public Financing Districts

MAP 5



PIER 70 SUD

HOEDOWN YARD CFD

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HOEDOWN YARD CFD

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD
- Hoedown Yard CFD

DDA Exhibit D1

Permitted Exceptions

In reference to: Chicago Title Company's 9th Amended Proforma attached hereto as *Attachment 1.*

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
2.	Taxes for the fiscal year 2017-2018	None levied as the property was vested in a public entity.	N/A as of Close of Escrow	N/A as of Close of Escrow
3.	Mello Roos Community Facilities District.	Any special taxes/assessments will only affect the Property post-closing. There are no special taxes/assessments currently due on the Property because it is held by the City and County of San Francisco.	Permitted Exception	Permitted Exception
4.	Supplemental Taxes	Approved, subject to Title Company adding the phrase "*resulting from changes of ownership or completion of new construction occurring after the date of this policy.*"	Permitted Exception	Permitted Exception
5.	Any adverse claim based upon the assertion that some portion of the land is tide or submerged lands.	To be eliminated after trust exchange.	Permitted Exception	Unpermitted Exception, provided that matters disclosed by the Trust Termination Patent recorded pursuant to the Trust Exchange Agreement will be a Permitted Exception.
6.	Any adverse claim based upon the assertion that any portion of said land was not tideland that was available for	To be eliminated after trust exchange.	Permitted Exception	Unpermitted Exception, provided that matters disclosed by the Trust Termination Patent recorded pursuant to the

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
	disposition by the State of California.			Trust Exchange Agreement will be a Permitted Exception.
7.	Rights and Easements for Commerce, Navigation and Fishery.	To be eliminated after trust exchange.	Permitted Exception	Unpermitted Exception, provided that matters disclosed by the Trust Termination Patent recorded pursuant to the Trust Exchange Agreement will be a Permitted Exception.
THE FOLLOWING ITEMS AFFECT THOSE PORTIONS OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4052, LOT 1:				
9.	Easement recorded November 26, 1940 in Book 3689, Page 185.	An easement from the Columbia Steel Company ("Grantor") to the City and County of San Francisco ("Grantee") for the purpose of the construction, maintenance and operation of sewers and all appurtenances.	Permitted Exception	Not applicable; exception does not affect any Development Parcels.
10.	Covenants, Conditions and Restrictions appearing in a Quitclaim Deed recorded November 13, 1967 at 26523 in Book B192, Page 384.	Quitclaim from the United States of America ("Grantor") to the State of California acting through the San Francisco Port Authority ("Grantee"). Said quitclaim deed is subject to the following: Subject to rights of way, restrictions, reservations and easements now existing or of record. Together will all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and	Permitted Exception	Not applicable; exception does not affect any Development Parcels.

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
		profits thereof, and also all the estate, right, title, interest, property possession, claim and demand whatsoever, in law as well as equity, of the Grantor of, in or to the described premises and every part and parcel thereof, with the appurtenances. Together with those items of personal property presently located at the said Department Reserve Plant, DOD #46, 20th and Illinois Streets, San Francisco, CA. [Note: Those items of personal property are listed on Exhibit A attached to the document.] It is the intention of the Grantor to convey to the Grantee all real property, personal property and improvements of whatsoever nature owned by the Grantor and located at the facility known as Departmental Reserve Plant, DOD #46, 20th and Illinois Streets, San Francisco, CA. Said property transferred was duly determined to be surplus pursuant to the General Services Administration for disposal pursuant to the Federal Property and Administrative Services Act of 19489 (63 Stat. 377).		
11.	Conditions, restrictions, Easements, Reservations and Limitations and Rights, Powers, Duties and Trust contained in the Legislative Grants and by law as to the land or any portion thereof acquired by the City and County of San Francisco, by	To be eliminated after trust exchange.	Permitted Exception	Unpermitted Exception; provided that matters disclosed by the Trust Termination Patent recorded pursuant to the Trust Exchange Agreement will be a Permitted Exception.

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
	Chapter 1333 of the Statues of 1968, as amended by Chapters 1296 and 1400, Statutes of 1969 and by Chapter 670, Statutes of 1970, and Chapter 1253, Statues of 1971, and as may be further amended, and such Reversionary Rights and Interest as may be possessed by the State of California under the terms and provisions of said Legislative Grants, or by law.			
12.	Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded January 30, 1969 at R40413 in Book B308, Page 686.	Document sets forth the terms and conditions and obligations by and between the City and County of San Francisco (the "City") and the Director of Finance of the State of California acting for and on behalf of the State of California, and assisted by the Secretary for Agriculture and Services of the State of the State of California and the San Francisco Port Authority relating to the Transfer of the Port property to the City from the State of California. To be eliminated upon trust exchange.	Permitted Exception	Unpermitted Exception; provided that matters disclosed by the Trust Termination Patent recorded pursuant to the Trust Exchange Agreement will be a Permitted Exception.
THE FOLLOWING ITEMS AFFECT THOSE PORTION OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4111, LOT 4				
13.	Judgment Quieting Title, San	The People of the State of California vs. The Bethlehem	Permitted Exception	Permitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
	Francisco Superior Court Case No. 401394, recorded April 16, 1954 at C63570 in Book 6359, Page 235.	Pacific Coast Steel Corporation et al.		
15	Permit recorded July 25, 1967 at Q4404 in Book B162, Page 939.	Revocable permit granted by the Department of Public Works to Bethlehem Steel Corp. for the construction and maintenance of a private force main in 20th Street to serve Blocks 4111 and 4046. Permit is conditioned on a 12,000-gallon per day maximum daily flow rate, and a 150-gallon per minute maximum flow rate.	Permitted Exception	Permitted Exception for benefit of Port property; however, if required, it will be treated as an Easement Action under DDA §8.1(e).
16.	Corporation Grant Deed recorded on December 16, 1982 at D275576 in Book D464, Page 628.	A Grant Deed from Bethlehem Steel Corporation to the City and County of San Francisco. Conveyance is subject to liens for general and special county and city taxes for the fiscal year July 1, 1982, to June 30, 1983. All subject to all easements, covenants, conditions and restrictions of record. Further subject to any matters that could be ascertained by an up-to-date survey, by making inquiry of persons in possession or by an inspection of the real property. All subject to rights and easements for commerce, navigation, and fishery in favor of the public or federal or state governments. Subject, further, to the effect of the following unrecorded instrument: Grant of Right of Way dated September 30, 1966, from Bethlehem Steel Corporation to the United States of America.	Permitted Exception	Permitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
17.	Street Encroachment Agreement recorded on July 6, 1976 at Z01074 in Book C196, Page 780.	The City and County of San Francisco Department of Public Works granted a Street Encroachment Permit to Bethlehem Steel Company affecting Block 4046, Lot 1; Blk. 4110, Lot 1 & Blk. 4111, Lot 2 located on both sides of 20th Street east of Illinois Street. Encroachment affects a fence and curbside parking area with 35 foot wide unrestricted access on 20th Street.	Permitted Exception	Permitted Exception for benefit of Port property (including Parcel K North); if Parcel K North becomes an Option Parcel under DDA §7.9(b), then if required, removal of Exception 17 will be treated as an Easement Action under DDA §8.1(e).
THE FOLLOWING ITEMS AFFECT ALL OF THE HEREIN DESCRIBED LAND				
24.	Covenant and Environmental Restriction on Property recorded August 19, 2016 as Inst. No. 2016-K308328-00.	The Covenant and Environmental Restriction on property (the "Covenant") affects the property consisting of Seawall Lot 349, Seawall Lot 345 (portion), Assessors Block 4110 (portion) and Twentieth Street (portion), generally bounded by Mariposa Street, Illinois Street and 22nd Street (the "Property"). The Covenant was made by the City and County of San Francisco ("Covenantor") for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Water Board"). The Property and groundwater underlying the property contains hazardous material as defined in California Health & Safety Code Section 25260. Subdivision (d). Covenantor promises to restrict the use of the Property as follows: a. Use of native soil for growing produce for human consumption shall not be permitted on the Property;	Permitted Exception to the extent it affects the Property	Permitted Exception to the extent it affects the Property

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
		b. Uses involving regular exposure to native soil shall not be permitted on the Property; c. No hospital shall be permitted on the Property; d. No Owners or Occupants of the Property or any thereof shall conduct any excavation work on the Property, except in accordance with the July 25, 2013 Risk Management Plan prepared by Treadwell & Rollo, Inc. (the "RMP"). e. All uses, maintenance and development of the Property shall comply with the RMP at all times, including but not limited to: restoring and subsequently maintaining the integrity of any pavement or other surface described in the RMP capable of preventing exposure to the underlying soil (the "Durable Cover") following any construction, remedial measures taken, or remedial equipment installed on the Property pursuant to the requirements of the Water Board and/or the RMP, unless otherwise expressly permitted in writing by the Water Board's Executive Officer. f. Except for the dewatering during construction activities, no Owners or Occupants of the Property shall drill, bore, otherwise construct, or use a well for the purpose of extracting ground water for any use. g. The Owner shall notify the Water Board of each of the following when not performed in compliance with the RMP or any Water Board approved work plans: (1) The type, cause, location and date of any disturbance to the Durable		

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
		Cover, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Property pursuant to the requirements of the Water Board, which could affect the ability of the Durable Cover or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. h. The Covenantor, all Owners and Occupants agree that the Water Board shall have reasonable access to the Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code. i. No Owner or Occupant of the Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Property. Unless terminated the covenant shall continue in effect in perpetuity.		
25.	Any right, title or interest by reason of the record title to said Land not having been established and quieted under the provisions of the "Destroyed Land Records Relief Act of 1906, as Amended," commonly known as the "McEnerney Act".	Title Company will require evidence that a McEnerney Judgement was filed on the property. Title may offer an endorsement to the title policy if no McEnerney judgment is found.	Permitted Exception	Unpermitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
27.	Easement(s) for the purpose(s) shown belowand rights incidental thereto, as set forth in the Master Lease upon the terms and conditions set forth therein.	Granting to the Port ingress and egress to and from Parcel 1 (Affordable Self-Storage), Parcel 2 (Portion of Building 21), Parcel 3 (Building No. 11 Site) and Parcel 4 (Pump Station), as shown on Exhibit B of the Master Lease.	Permitted Exception	N/A (will be released at Close of Escrow for the Parcel Lease/Fee Transfer).
28.	Development Agreement, dated May 2, by and between the City and County of San Francisco, a political subdivision and municipal corporation of the State of California, and FC Pier 70, LLC, a Delaware limited liability company	Governing certain rights and obligations of the parties for the development of the 28-acre Site	Permitted Exception	Permitted Exception
29.	Disposition and Development Agreement dated as of May 2, 2018, between the City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission, and FC Pier 70, LLC, a Delaware limited liability company		Permitted Exception	Unpermitted Exception (to be released at close of escrow for each parcel lease/fee transfer)

CLTA STANDARD COVERAGE POLICY OF TITLE INSURANCE

Policy Number:

9th AMENDED PROFORMA

Issued By:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;

and in addition, as to an insured lender only:

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage, said mortgage being shown in Schedule B in the order of its priority;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule B, or the failure of the assignment shown in Schedule B to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Chicago Title Company
2150 John Glenn Drive, Suite 300
Concord, CA 94520

Countersigned By:

PROFORMA

Authorized Officer or Agent

Chicago Title Insurance Company

By:

President

Attest:

Secretary

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SCHEDULE A

Date of Policy	Amount of Insurance	Premium
PROFORMA	$47,500,000.00	PROFORMA

1. Name of Insured:

   FC Pier 70, LLC, a Delaware limited liability company

2. The estate or interest in the land which is covered by this policy is:

   A Leasehold as created by that certain lease dated ____________, 2018 by and between THE CITY AND COUNTY OF SAN FRANCISCO, operating by and through the SAN FRANCISCO PORT COMMISSION, as Lessor, and FC PIER 70, LLC, a Delaware limited liability company, as Lessee, as referenced in the document entitled Memorandum of Lease which was recorded ____________, 2018 under Instrument No. ______________, of Official Records, for the term, upon and subject to all the provisions contained in said document, and in said lease.

3. Title to the estate or interest in the land is vested in:

   FC Pier 70, LLC, a Delaware limited liability company

4. The land referred to in this policy is described as follows:

   SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED

END OF SCHEDULE A

PROFORMA

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EXHIBIT "A"

Legal Description

For APN/Parcel ID(s): Lot 001, Block 4052 (Portion) and Lot 004, Block 4111 (Portion)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEING A PORTION PARCEL "A", AS SAID PARCEL IS SHOWN ON "MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO", FILED IN BOOK "W" OF MAPS, PAGES 66-72, AND FURTHER DESCRIBED IN THAT DOCUMENT RECORDED MAY 14, 1976, AS DOCUMENT NUMBER Y88210, IN BOOK C169, PAGE 573, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

ALSO BEING BLOCKS 462, 479, 480, 487, 488, 505 AND PORTIONS OF BLOCKS 445, 446, 461, 463, 478, 489, 504 AND 506, AS SAID BLOCKS ARE SHOWN ON THAT MAP ENTITLED " RANCHO DEL POTRERO NUEVO", RECORDED MARCH 21, 1864 IN BOOK "C" AND "D" OF MAPS, PAGES 78 AND 79, OFFICE OF THE RECORDED, CITY AND COUNTY OF SAN FRANCISCO.

ALSO BEING A PORTION OF BOARD OF TIDE LAND COMMISSIONERS MAP ENTITLED, "MAP OF THE SALT MARSH AND TIDE LANDS AND LANDS LYING UNDER WATER SOUTH OF SECOND STREET AND SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO", ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND A DUPLICATE COPY FILED IN MAP BOOK "W", PAGES 46 AND 47, OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO.

ALSO BEING A PORTION OF THE FOLLOWING CLOSED STREETS PER CITY RESOLUTIONS: GEORGIA STREET, LOUISIANA STREET, MARYLAND STREET, DELAWARE STREET, WATERFRONT STREET, 20TH STREET, 21ST STREET AND 22ND STREET, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF 22ND STREET (66 FEET WIDE), THE WESTERLY LINE OF FORMER GEORGIA STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTIONS No. 1759, DATED FEBRUARY 27, 1884, No. 10787, DATED MARCH 30, 1914 AND No. 1376, DATED OCTOBER 15, 1940 AND THE GENERAL WESTERLY LINE OF PARCEL 1 OF THAT PARCEL OF LAND DESCRIBED IN DEED GRANTED TO THE STATE OF CALIFORNIA, RECORDED NOVEMBER 13, 1967 IN BOOK B192, PAGE 384, OFFICIAL RECORDS (B192 O.R. 384), CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE NORTHERLY LINE OF FORMER 22ND STREET, AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 1376, DATED OCTOBER 15, 1940 AND ALONG THE LINE OF SAID PARCEL 1 (B192 O.R. 384), NORTH 85°38'01" EAST 40.00 FEET TO THE CENTERLINE OF SAID FORMER GEORGIA STREET; THENCE ALONG SAID CENTERLINE AND LINE OF PARCEL 1 (B192 O.R. 384), NORTH 04°21'59" WEST 270.00 FEET TO THE MOST SOUTHEASTERLY CORNER OF PARCEL 2 OF THAT PARCEL OF LAND AS DESCRIBED IN GRANT DEED TO THE CITY AND COUNTY OF SAN FRANCISCO, RECORDED DECEMBER 16, 1982, AS DOCUMENT NO. D275576, IN BOOK D464, PAGE 628, OFFICIAL RECORDS (D464 O.R. 628), CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE SOUTHERLY AND WESTERLY LINES OF SAID PARCEL 2 (D464 O.R. 628), THE FOLLOWING TWO COURSES: SOUTH 85° 38'01" WEST 240.00 FEET TO THE EASTERLY LINE OF MICHIGAN STREET (80 FEET WIDE), AND ALONG SAID LINE OF MICHIGAN STREET NORTH 04° 21'59" WEST 206.17 FEET; THENCE NORTH 85°38'01"

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EXHIBIT "A"
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EAST 397.04 FEET; THENCE NORTH 04°21'59" WEST 106.90 FEET; THENCE NORTH 85°38'01" EAST 84.15 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00'00", AN ARC LENGTH OF 39.27 FEET; THENCE NORTH 04°21'59" WEST 257.93 FEET TO THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE) AND THE NORTHERLY LINE OF SAID PARCEL 2 (D464 O.R. 628); THENCE ALONG SAID LINES, NORTH 85°38'01" EAST 13.81 FEET TO THE EASTERLY LINE OF SAID STREET AND THE GENERAL WESTERLY LINE OF SAID PARCEL 1 (B192 O.R. 384); THENCE ALONG SAID LINES NORTH 04°21'59" WEST 33.00 FEET TO THE CENTERLINE OF SAID STREET AND SOUTHERLY LINE OF PARCEL 1 OF SAID D464 O.R. 628; THENCE ALONG A PORTION OF SAID PARCEL 1 (D464 O.R. 628), ALONG A PORTION OF THE NORTHERLY LINE OF SAID PARCEL 1 (B192 O.R. 384) AND ALONG THE CENTERLINE OF FORMER 20TH STREET, AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 10787, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 618.80 FEET; THENCE SOUTH 36°29'34" EAST 45.07 FEET; THENCE NORTH 53°30'26" EAST 101 FEET, MORE OR LESS, TO THE MEAN HIGH WATER LINE, AT AN ELEVATION OF 5.8 FEET (NAVD88 DATUM), AS INDICATED IN A TIDAL DATUM STUDY PROVIDED BY SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC), ENTITLED, "SAN FRANCISCO BAY TIDAL DATUMS AND EXTREME TIDES STUDY", DATED FEBRUARY, 2016, PREPARED BY AECOM; THENCE IN A GENERAL SOUTHERLY DIRECTION ALONG SAID MEAN HIGH WATER LINE, APPROXIMATELY 1686 FEET TO THE EASTERLY PROLONGATION OF THE MOST SOUTHERLY LINE OF SAID PARCEL 1 (B192 O.R. 384); THENCE ALONG SAID SOUTHERLY LINE, SOUTH 85°30'01" WEST 1085 FEET, MORE OR LESS, TO THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL; THENCE ALONG THE LINES OF SAID PARCEL, NORTH 25°06'47" WEST 56.46 FEET AND NORTH 42° 41'35" WEST 129.00 FEET TO THE SOUTHEASTERLY CORNER OF SAID 22ND STREET; THENCE ALONG THE EASTERLY LINE OF SAID 22ND STREET AND THE LINE OF SAID PARCEL 1 (B192 O.R. 384), NORTH 04°21'59" WEST 66.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THE FOLLOWING PARCELS:

PARCEL 1 (AFFORDABLE SELF STORAGE):
BEGINNING AT THE POINT ON THE SOUTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED GRANTED TO THE STATE OF CALIFORNIA, RECORDED NOVEMBER 13, 1967 IN BOOK B192, PAGE 384, OFFICIAL RECORDS (B192 O.R. 384), CITY AND COUNTY OF SAN FRANCISCO, FROM WHICH THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL BEARS SOUTH 85°38'01" WEST 491.1 FEET, SAID POINT OF BEGINNING ALSO BEING ON A LINE WHICH BEARS SOUTH 04°21'59" EAST FROM THE SOUTHEAST CORNER OF A METAL BUILDING KNOWN AS BUILDING NO. 66; THENCE FROM SAID POINT OF BEGINNING, NORTH 04°21'59" WEST 220.0 FEET; THENCE NORTH 85°38'01" EAST 40.0 FEET; THENCE NORTH 04°21'59" WEST 178.0 FEET; THENCE NORTH 85°38'01" EAST 641 FEET, MORE OR LESS TO THE TO THE EASTERLY EDGE OF A CONCRETE DOCK WALL; THENCE ALONG A MEANDERING CONTOUR LINE AT AN ELEVATION OF 5.8 FEET (NAVD88 DATUM), BEING THE MEAN HIGH WATER LINE (MHW) AS INDICATED IN A TIDAL DATUM STUDY PROVIDED BY SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC), ENTITLED, "SAN FRANCISCO BAY TIDAL DATUMS AND EXTREME TIDES STUDY", DATED FEBRUARY, 2016, PREPARED BY AECOM, SOUTHERLY AND WESTERLY ALONG SAID DOCK TO THE SHORELINE AND CONTINUING ALONG THE SHORELINE, EDGES OF CONCRETE WALLS OF DOCKS AND SEAWALLS ALONG SAID MHW LINE, IN A GENERAL SOUTHERLY DIRECTION, 596 FEET, PLUS OR MINUS, TO A POINT ON EASTERLY PROJECTION

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EXHIBIT "A"
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OF THE SOUTHERLY LINE OF SAID B192 O.R. 384 PARCEL; THENCE ALONG SAID EASTERLY PROJECTION AND THE LINE OF B192 O.R. 384 PARCEL, SOUTH 85°38'01" WEST 594 FEET, MORE OR LESS, TO SAID POINT OF BEGINNING.

PARCEL 2 (PORTION OF BUILDING NO. 21):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 424.8 FEET; THENCE SOUTH 85°38'01" WEST 1.2 FEET TO SOUTHWESTERLY EXTERIOR CORNER OF A 2-STORY METAL BUILDING, KNOWN AS BUILDING NO. 21, ALSO BEING THE **TRUE POINT OF BEGINNING**; THENCE ALONG THE EXTERIOR WESTERLY WALL OF SAID BUILDING, MORE OR LESS, NORTH 04°21'59" WEST 45.0 FEET, MORE OR LESS, TO THE NORTHERLY FACE OF A 6 INCH WIDE CONCRETE PARTITION WALL; THENCE ALONG SAID WALL, NORTH 85°38'01" EAST 54.5 FEET, MORE OR LESS, TO NORTHEAST CORNER OF SAID WALL; THENCE ALONG THE EASTERLY FACE OF SAID WALL, SOUTH 04°21'59" EAST 45.0 FEET, MORE OR LESS, TO THE EXTERIOR SOUTHERLY WALL OF SAID BUILDING NO. 21; THENCE ALONG SAID BUILDING WALL, MORE OR LESS, SOUTH 85°38'01" WEST 54.5 FEET TO SAID TRUE POINT OF BEGINNING.

PARCEL 3 (BUILDING NO. 11 SITE):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 327.0 FEET; THENCE NORTH 85°38'01" EAST 100.9 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 85°38'01" EAST 77.5 FEET; THENCE SOUTH 76°21'39" EAST 57.5 FEET; THENCE SOUTH 04°21'59" EAST 145.0 FEET; THENCE SOUTH 85°38'01" WEST 49.5 FEET; THENCE SOUTH 04°21'59" EAST 4.0 FEET; THENCE SOUTH 85°38'01" WEST 82.7 FEET TO A POINT ON A LINE BEARING SOUTH 04°21'59" EAST FROM SAID TRUE POINT OF BEGINNING; THENCE NORTH 04°21'59" WEST 166.8 FEET TO SAID TRUE POINT OF BEGINNING.

PARCEL 4 (PUMP STATION):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO.

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EXHIBIT "A"

Legal Description

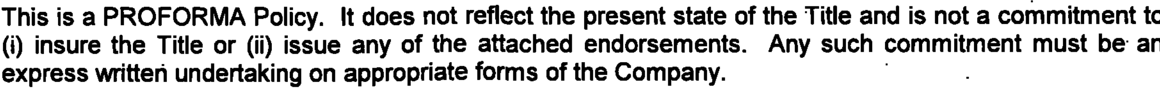
10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,400.00 FEET TO THE EASTERLY LINE OF FORMER DELAWARE STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER DELAWARE STREET, SOUTH 04°21'59" EAST 76.9 FEET; THENCE NORTH 85°38'01" EAST 37.0 FEET TO THE **TRUE POINT OF BEGINNING**, BEING A POINT ON THE EASTERLY FACE OF AN 18 INCH WIDE CONCRETE WALL; THENCE ALONG SAID FACE OF WALL, NORTH 33°06'32" WEST 38.4 FEET AND NORTH 13°01'17" WEST 57.6 FEET TO A POINT ON A CHAIN-LINK FENCE; THENCE ALONG SAID FENCE, NORTH 79°33'35" EAST 19.8 FEET TO THE WESTERLY EDGE OF A CONCRETE LOADING DOCK; THENCE ALONG SAID EDGE OF LOADING DOCK, SOUTH 36°29'34" EAST 24.7 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOADING DOCK; THENCE ALONG THE SOUTHERLY EDGE OF SAID DOCK AND ALONG THE SOUTHERLY LINE OF A 1-STORY METAL BUILDING KNOWN AS BUILDING NO. 6, NORTH 53°30'26" EAST 40.5 FEET; THENCE SOUTH 02°02'49" EAST 95.1 FEET TO A POINT ON THE NORTHERLY FACE OF SAID 18 INCH WIDE CONCRETE WALL; THENCE ALONG THE FACE OF SAID WALL, SOUTH 88°20'10" WEST 36.2 FEET TO SAID TRUE POINT OF BEGINNING.

THE BASIS OF BEARING FOR THE ABOVE PARCELS IS BASED UPON THE BEARING OF N03°41'33"W BETWEEN SURVEY CONTROL POINTS NUMBERED 375 AND 376, OF THE HIGH PRECISION NETWORK DENSIFICATION (HPND), CITY & COUNTY OF SAN FRANCISCO 2013 COORDINATE SYSTEM (SFCS13).

ALSO EXCEPTING THEREFROM, ALL SUBSURFACE MINERAL DEPOSITS, INCLUDING OIL AND GAS DEPOSITS, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS ON SAID LAND FOR EXPLORATION, DRILLING AND EXTRACTION OF SUCH MINERAL, OIL AND GAS DEPOSITS, AS EXCEPTED AND RESERVED BY THE STATE OF CALIFORNIA IN THAT CERTAIN ACT OF THE LEGISLATURE (THE "BURTON ACT") SET FORTH IN CHAPTER 1333 OF THE STATUTES OF 1968 AND AMENDMENTS THERETO, AND UPON TERMS AND PROVISIONS SET FORTH THEREIN.

Assessor's Parcel Nos. : Portions of 4052-001 and 4111-004

PRO



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SCHEDULE B
EXCEPTIONS FROM COVERAGE

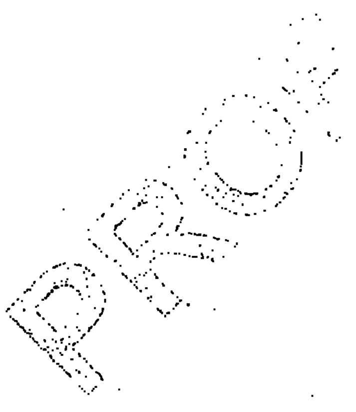
This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

   Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matter excepted under (a), (b), or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

END OF SCHEDULE B - PART I



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SCHEDULE B
EXCEPTIONS FROM COVERAGE

PART II

1. Intentionally deleted

2. There were no taxes levied for the fiscal year 2017-2018 as the property was vested in a public entity.

3. The herein described property lies within the boundaries of a Mello Roos Community Facilities District ("CFD"), as follows:

   CFD No: 90 1
   For: School Facility Repair and Maintenance

   This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

   None now due and payable

4. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring on or after the Date of Policy.

   None now due and payable

5. Any adverse claim based upon the assertion that some portion of said Land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.

6. Any adverse claim based upon the assertion that any portion of said Land was not tideland or submerged land which was available for disposition by the State of California, or that any portion thereof has ceased to be tidelands or submerged lands by reason of erosion or by reason of having become upland by accretion.

7. Rights and Easements for Commerce, Navigation, and Fishery.

8. Intentionally deleted

THE FOLLOWING ITEMS AFFECT THOSE PORTIONS OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4052, LOT 1:

9. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

   Granted to: City and County of San Francisco, a municipal corporation
   Purpose: Construction, maintenance and operation of sewers
   Recording Date: November 26, 1940
   Recording No.: Book 3689, Page 185, Official Records
   Affects: Portion lying within the bounds of former 20th Street, now closed, and also property other than premises described herein

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

10. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

    Recording Date: November 13, 1967
    Recording No.: 26523, Book B192, Page 384, Official Records.

11. Conditions, restrictions, Easements, Reservations and Limitations and Rights, Powers, Duties and Trust contained in the Legislative Grants and by law as to the land or any portion thereof acquired by the City and County of San Francisco, by Chapter 1333 of the Statues of 1968, as amended by Chapters 1296 and 1400, Statutes of 1969 and by Chapter 670, Statutes of 1970, and Chapter 1253, Statues of 1971, and as may be further amended, and such Reversionary Rights and Interest as may be possessed by the State of California under the terms and provisions of said Legislative Grants, or by law.

    Conditions, Restrictions, Easements, Reservations and Limitations and Rights, Powers, Duties and Trusts contained in the Legislative Grants, and by law as to the land or any portion thereof, acquired by the City and County of San Francisco by Chapter 477 of the Statutes of 2011 (AB 418) and as may be further amended, and such Reversionary Rights and Interests as may be possessed by the State of California under the terms and provisions of said Legislative Grants, or by law.

12. Matters contained in that certain document

    Entitled: Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco
    Dated: January 24, 1969
    Executed by: State of California and City and County of San Francisco
    Recording Date: January 30, 1969
    Recording No.: R40413, Book B308, Page 686, Official Records

    Reference is hereby made to said document for full particulars.

    THE FOLLOWING ITEMS AFFECT THOSE PORTION OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4111, LOT 4:

13. Matters as set forth in that certain document entitled "Judgment Quieting Title", San Francisco Superior Court Case No. 401394, recorded April 16, 1954, as instrument no. C63570, Book 6359, Page 235 of Official Records, pertaining to a portion of said land.

    Affects: a portion of former Lousiana Street lying within the herein described land.

    Reference is made to the record for full particulars.

14. Intentionally deleted

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

15. Matters contained in that certain document

Entitled:	Order No. 76214
Dated:	June 13, 1967
Recording Date:	July 25, 1967
Recording No.:	Q4404, Book B162, Page 939, of Official Records

Reference is hereby made to said document for full particulars.

16. Matters contained in that certain document "Corporation Grant Deed"

Grantor:	Bethlehem Steel Corporation, a Delaware corporation
Grantee:	City and County of San Francisco
Recording Date:	December 16, 1982
Recording No.:	D275576, in Book D464, Page 628 of Official Records

Reference is hereby made to said document for full particulars.

17. Matters contained in that certain document entitled "Street Encroachment Agreement"

Recording Date:	July 6, 1976
Recording No.:	Z01074, in Book C196, Page 780 of Official Records

Reference is hereby made to said document for full particulars.

18. Intentionally deleted

19. Intentionally deleted

20. Intentionally deleted

THE FOLLOWING ITEMS AFFECT ALL OF THE HEREIN DESCRIBED LAND:

21. Intentionally deleted

22. Intentionally deleted

23. Intentionally deleted

PROFORMA

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

24. Matters contained in that certain document

Entitled:	Covenant and Environmental Restriction on Property
Dated:	August 11, 2016
Executed by:	The City and County of San Francisco, acting by and through the Port of San Francisco and State of California Regional Water Quality Board, San Francisco Bay Region
Recording Date:	August 19, 2016
Recording No.:	2016-K308328-00, Official Records

Reference is hereby made to said document for full particulars.

25. Any right, title or interest of persons, known or unknown, who claim or may claim adversely to the vested owners herein by reason of the record title to said Land not having been established and quieted under the provisions of the "Destroyed Land Records Relief Act of 1906, as Amended," commonly known as the "McEnerney Act."

Affects: Portion of the property

26. Intentionally deleted

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as set forth in the Master Lease upon the terms and conditions set forth therein

Granted to:	The City and County of San Francisco, operating by and through the San Francisco Port Commission, and their successors and assigns
Purpose:	Ingress and egress to and from Parcel 1 (Affordable Self Storage), Parcel 2 (Portion of Building No. 21), Parcel 3 (Building No. 11 Site) and Parcel 4 (Pump Station) as shown on Exhibit B of the Mater Lease
Recording Date:	________, 2018
Recording No.:	2018-________, Official Records

28. Development Agreement

Dated:	May 2, 2018
Executed by and between:	The City and County of San Francisco, a political subdivision and municipal corporation of the State of California and FC Pier 70, a Delaware limited liability company
Recording Date:	________, 2018
Recording No.:	2018-________, Official Records

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

29. Disposition and Development Agreement, upon the terms, covenants, conditions and provisions set forth therein

Dated:	May 2, 2018
Executed by and between:	The City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission and FC Pier 70, a Delaware limited liability company
Recording Date:	________, 2018
Recording No.:	2018-________, Official Records

END OF SCHEDULE B - PART II

PROFORMA

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EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land, (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. The term "insured" also includes:

   (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

   (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

   (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

   (iv) Subject to any rights or defenses the Company would have had against the named insured, (A) the spouse of an insured who receives title to the land because of dissolution of marriage, (B) the trustee or successor trustee of a trust or any estate planning entity created for the insured to whom or to which the insured transfers title to the land after the Date of Policy or (C) the beneficiaries of such a trust upon the death of the insured.

(b) "insured claimant": an insured claiming loss or damage.

(c) "insured lender": the owner of an insured mortgage.

(d) "insured mortgage": a mortgage shown in Schedule B, the owner of which is named as an insured in Schedule A.

(e) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(f) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(g) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

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(continued)

(h) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

(i) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

(a) After Acquisition of Title by Insured Lender.

If this policy insures the owner of the indebtedness secured by the insured mortgage, the coverage of this policy shall continue in force as of Date of Policy in favor of (i) such insured lender who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) After Conveyance of Title by an Insured.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from an insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to an insured.

(c) Amount of Insurance.

The amount of insurance after the acquisition or after the conveyance by an insured lender shall in neither event exceed the least of:

(i) The amount of insurance stated in Schedule A;

(ii) The amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) The amount paid by any governmental agency or governmental instrumentality, if the agency or the instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

An insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to that insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by an insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of such insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of such insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently,

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

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(continued)

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, an insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for this purpose. Whenever requested by the Company, an insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of an insured to furnish the required cooperation, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by each insured claimant shall be furnished to the Company within ninety (90) days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of an insured claimant to provide the required proof of loss or damage, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, an insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by an insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of an insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that insured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) in case loss or damage is claimed under this policy by the owner of the indebtedness secured by the insured mortgage, to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of the option provided for in paragraph a(i), all liability and obligations to the insured under this policy, other than to make the payment required in that paragraph, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

Upon the exercise by the Company of the option provided for in paragraph a(ii) the Company's obligation to an insured Lender under this policy for the claimed loss or damage, other than the payment required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

(b) To Pay or Otherwise Settle with Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or b(ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

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(continued)

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy to an insured lender shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured lender has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The liability of the Company under this policy to an insured owner of the estate or interest in the land described in Schedule A shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(d) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, or, if applicable, to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable to an insured lender for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of insurance pro tanto. However, as to an insured lender, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of insurance afforded under this policy as to any such insured, except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company to an insured lender except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

The provisions of this Section shall not apply to an insured lender, unless such insured acquires title to said estate or interest in satisfaction of the indebtedness secured by an insured mortgage.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

(continued)

11. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) **The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated (i) as to an insured owner, to all rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss; and (ii) as to an insured lender, to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) **The Insured's Rights and Limitations.**

Notwithstanding the foregoing, the owner of the indebtedness secured by an insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of an insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) **The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of an insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is One Million And No/100 Dollars ($1,000,000) or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of One Million And No/100 Dollars ($1,000,000) shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

(continued)

15. SEVERABILITY

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at:

Chicago Title Insurance Company
P.O. Box 45023
Jacksonville, FL 32232-5023
Attn: Claims Department

END OF CONDITIONS AND STIPULATIONS

PROFORMA

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

ENDORSEMENT - ALTA 8.2-06

COMMERCIAL ENVIRONMENTAL PROTECTION LIEN

Attached to Policy Number:

9th AMENDED PROFORMA

Issued By:

Charge: PROFORMA

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

PROFORMA

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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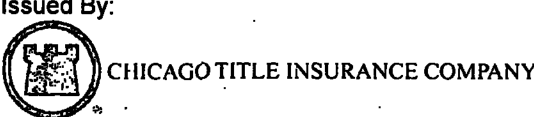
ENDORSEMENT - SE 91 DELETION OF ARBITRATION

Attached to Policy Number:

9th AMENDED PROFORMA

Issued By:



Charge: PROFORMA

The policy is hereby amended by deleting Paragraph 14 of the Conditions, relating to Arbitration.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: PROFORMA

Countersigned By:

PROFORMA
Authorized Officer or Agent

PROFORMA

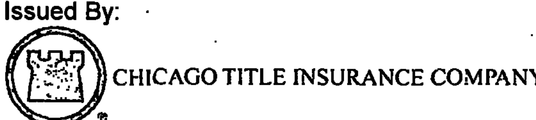
This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

ENDORSEMENT - ALTA 13-06 LEASEHOLD

Attached to Policy Number:

9th AMENDED PROFORMA

Issued By:



Charge: PROFORMA

1. As used in this endorsement, the following terms shall mean:

   a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

   b. "Lease": the lease described in Schedule A.

   c. "Leasehold Estate": the right of possession granted in the Lease for the Lease Term.

   d. "Lease Term": the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

   e. "Personal Property": property, in which and to the extent the Insured has rights, located on or affixed to the Land on or after Date of Policy that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.

   f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted.

   g. "Tenant Leasehold Improvements": Those improvements, in which and to the extent the Insured has rights, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured:

   If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction of the Insured, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement:

   If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(ii) of the Conditions:

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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a. The reasonable cost of (i) removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, (ii) transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, (iii) repairing the Personal Property damaged by reason of the removal and relocation, and (iv) restoring the Land to the extent damaged as a result of the removal and relocation of the Personal Property and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.

4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

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CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR

FORM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

([PIER 70] – [DESCRIBE PARCEL])

BETWEEN THE

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AND

_[VERTICAL DEVELOPER]

DATED AS OF _______________, 201[___]

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

DRAFT

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EXHIBITS AND SCHEDULES:

Exhibit A	Real Property Description
Exhibit B	Vertical Project Description [For Residential Fee Parcels only: Scope of Development]
Exhibit C	[Form of Quitclaim Deed][Form of Parcel Lease]

[the following Exhibits C1 through C-4 for residential fee parcels only

[Exhibit C-1	Restrictive Covenants]
Exhibit C-2A	Notice of Transfer Fee Covenant
Exhibit C-2	Transfer Fee Covenant
Exhibit C-3	Schedule of Performance

Exhibit D	Notices of Special Tax
Exhibit E	Form of License
Exhibit F	Vertical Developer Representations and Warranties
Exhibit G	Workforce Development Plan
Exhibit H	Horizontal DDA Release Form
Exhibit I	Partial Release of Master Lease
Exhibit J	Form of Memorandum of Vertical DDA
Exhibit K	Mitigation Monitoring and Reporting Program
Exhibit L	Assessor Requested Information
Exhibit M	Form of Architect's Certificate
Exhibit N	Form of Certificate of Completion
Exhibit O	Form of Significant Change Certificate
Exhibit P	Form of Estoppel Certificate
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Exhibit R	Form of Assignment and Assumption Agreement
Exhibit S	Form of Development Agreement Assignment

SCHEDULES

Schedule 3.1	CFD Matters
Schedule 4.2	Port Disclosure Matters
Schedule 12.4-1	Description of Deferred Infrastructure **[applicable for certain deals]**
[Schedule 15.3	Remedies for Failure to Commence Construction] **[only for residential fee parcels.]**
Schedule 16	Financing Provisions **[only for fee parcels]**
Schedule 18.1	Hazardous Materials Indemnity **[only for fee parcels]**
Schedule 19.4	Port's Share of Net Transfer Proceeds **[only for FC Affiliate fee parcels]**

[Note: The VDDA for Historic Buildings 2, 12, and 21 will be revised based on the Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21 attached hereto.]

FORM VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

([Pier 70] – DESCRIBE PARCEL])

THIS VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of _______________, 20___, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the San Francisco Port Commission ("**Port**"), _________________________, and a _________________________ ("**Vertical Developer**"). All Exhibits and Schedules attached hereto are hereby incorporated by reference into this Agreement and will be construed as a single instrument and referred to herein as this "**Agreement**." Initially capitalized terms in this Agreement are defined in ***Article 22***.

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port owns certain real property located in the City and County of San Francisco consisting of approximately ________ square feet of unimproved land, as more particularly described on ***Exhibit A*** attached hereto (as may be refined and adjusted in accordance with the terms of this Agreement; the "**Property**"). The Property is located within an approximately 28-acre area located in the southeast corner of Pier 70 (the "**28-Acre Site**") as more particularly described in that certain Disposition and Development Agreement dated __________, 2018, by and between FC Pier 70, LLC, a Delaware limited liability company ("**Horizontal Developer**") and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the "**Horizontal DDA**") and that certain Master Lease dated [_______], 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the "**Master Lease**"). The boundaries of the Property may be refined and adjusted with the advancement of the 28-Acre Site development as set forth in ***Section 3.1(d)***.

B. Under the Horizontal DDA and the Master Lease, Port has agreed to convey by sale or ground lease those certain Development Parcels (as defined in the Horizontal DDA) in accordance with the terms thereof. The Property is a Development Parcel under the Horizontal DDA, within Phase [XX] of development thereunder.

C. Planning Code Section 249.79 (the Pier 70 Special Use District) (as amended from time to time, the "**SUD**") establishes the basic land use standards for vertical development within the Phase and sets forth the process and requirements for design review and approval related to Vertical Development. As authorized under the SUD, the Port and the Planning Commission approved the Pier 70 Design for Development that sets forth design standards and design guidelines that will apply to all Vertical Development within the Phase.

D. On __________, 201_, the Port approved a Phase [XX] Submittal (the "**Phase Submittal**") that set forth the approved development program for the development of Phase [XX], as described therein and consistent with the Horizontal DDA, including, among other things, (i) Horizontal Developer's obligations with respect to the construction of certain Horizontal Improvements, (ii) the development plan for Phase [XX], including affordable housing and park and open space requirements, and (iii) certain other associated public benefits to be provided in Phase [XX].

E. [Include additional Recitals that describe the parcel disposition process as provided under the Horizontal DDA, and any other relevant facts and circumstances leading up to execution of this VDDA]

F. [for commercial parcels: At Closing, Vertical Developer desires to ground lease the Property from Port and Port is willing to ground lease the Property to Vertical Developer on the terms and conditions set forth herein.]

[for residential parcels: Subject to the terms and conditions of this Agreement, Vertical Developer desires to [for fee parcels: purchase] [for ground lease parcels: ground lease] the Property and Port is willing to [for feel parcels: sell] [for ground lease parcels: ground lease] the Property on the terms and conditions set forth herein.]

G. Vertical Developer proposes to construct the project generally described in ***Exhibit B*** (as the same may be modified from time to time in accordance with the terms hereof, the "**Vertical Project**") under the terms of this Agreement. The term "**Vertical Project**" includes the Deferred Infrastructure. In connection with the Vertical Project, Vertical Developer is obligated to provide certain public benefits, as more particularly set forth herein, including [insert as appropriate: [providing Inclusionary Units]; [on-site child-care facilities]; [assuming the obligation to construct Deferred Infrastructure obligations] [other obligations]] and to comply with all applicable requirements of the Workforce Development Plan, the Mitigation Monitoring and Reporting Program and the Special Provisions.

H. The parties now desire to enter into this Agreement to set forth the terms and conditions upon which Port will deliver [for ground lease parcels: a leasehold estate] [for feel parcels: a fee interest] in the Property to Vertical Developer and Vertical Developer will develop the Vertical Project.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Port and Vertical Developer hereby agree as follows:

AGREEMENT

1. CONVEYANCE OF PROPERTY.

Subject to the terms, covenants and conditions set forth herein, Port agrees to [for fee parcels: sell] [for ground lease parcels: ground lease on the terms substantially in the form set forth in the lease attached hereto as ***Exhibit C,*** subject to mutually agreed upon modifications ("**Parcel Lease**")] to Vertical Developer, and Vertical Developer agrees to [for fee parcels: purchase] [for ground lease parcels: ground lease on the terms set forth in the Parcel Lease] from Port, Port's interest in the Property.

2. ACQUISITION PRICE.

2.1. ***Acquisition Price.*** The [for fee parcels: acquisition price for the Property] [for ground lease parcels: consideration due Port from Vertical Developer under the terms of the Parcel Lease on the Closing Date] is ________________________________ and __/100 Dollars ($______________) (the "**Acquisition Price**").

2.2. ***Payment of Acquisition Price; Deposit.*** Vertical Developer will pay Port the Acquisition Price as follows:

(a) **[For residential parcels: Deposit**. On or prior to the Effective Date, Vertical Developer will make an earnest money deposit in an amount equal to ten percent (10%) of the Acquisition Price (the "**Deposit**").] **[for commercial parcels: Initial Deposit.** On or prior to the Effective Date, Vertical Developer will make an earnest money deposit in an amount equal to ten percent (10%) of **[for prepaid commercial leases**: the Acquisition Price]**[for hybrid commercial leases**: [insert amount that is ten percent (10%) of the present value of the Premises][(the "**Initial Deposit**").]

[for commercial leases. Additional Deposit. If Vertical Developer elects to extend the Target Closing Date in accordance with ***Section 7.3(a)***, then on the Target Closing Date, Vertical Developer will make an additional deposit in an amount equal to ten percent (10%) of **[for prepaid commercial leases**: the Acquisition Price] **[for hybrid commercial leases:** [insert amount that is ten percent (10%) of the present value of the Premises] (the "**Additional Deposit**"). The Initial Deposit and the Additional Deposit are collectively referred to as the "**Deposit**." If there is no Additional Deposit, then the Initial Deposit may also be referred to as the "**Deposit.**"

(b) Before expiration of the Contingency Period, the Deposit will be refundable to Vertical Developer only if this Agreement is terminated in accordance with ***Section 6.2***. After expiration of the Contingency Period, the Deposit is non-refundable to Vertical Developer except as set forth in ***Sections 6.3(b), 8.1, 10.2*** or ***Section 10.4***. The Deposit will be credited against the Acquisition Price at Closing.

[**for non-Credit Bid deals only:** Vertical Developer will deliver the Deposit into escrow with [insert name of Title Company] (the "**Title Company**" or "**Escrow Agent**"). The Deposit will be held in an interest-bearing account, and all interest thereon will be deemed a part of the Deposit.] The Deposit (including interest thereon) will be applied to the Acquisition Price payable to Port [for sale parcels: at the consummation of the purchase and sale contemplated hereunder] [for ground lease parcels: upon the mutual execution and delivery of the Parcel Lease as contemplated hereunder] (the "**Closing**" or the "**Close of Escrow**").

[**for Credit Bid deals only**: Each Deposit will be applied by Credit Bid on the date it is due. The Deposit will be refundable to Vertical Developer only if this Agreement is terminated in accordance with ***Section 6.2*** before expiration of the Contingency Period, or after expiration of the Contingency Period, in accordance with ***Section 6.3(b), 8.1,*** or ***Section 10.2*** or ***Section 10.4(a)*** The Acquisition Price less the Deposit will be applied by Credit Bid [for sale parcels: at the consummation of the purchase and sale contemplated hereunder] [for ground lease parcels: upon the mutual execution and delivery of the Parcel Lease as contemplated hereunder] (the "**Closing**" or the "**Close of Escrow**")]

(c) **Independent Consideration**. Notwithstanding any provision of this Agreement to the contrary, upon any early termination of this Agreement where Vertical Developer is entitled to a refund of the Deposit, the Escrow Agent will deduct from the Deposit the sum of One Thousand Dollars ($1,000) (the "**Independent Contract Consideration**") and deliver such Independent Contract Consideration to Port, which amount the parties bargained for and agree to as consideration for Vertical Developer's right to inspect and purchase the Property pursuant to this Agreement and for Port's execution, delivery and performance of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is nonrefundable, and is fully earned and will be retained by Port notwithstanding any other provision of this Agreement.

(d) [**For Vertical Developer Affiliates**]: **Credit Bid**. All payments to be made by Vertical Developer under this ***Section 2.2*** will be made by Credit Bid in accordance with Sections 3.3 and 3.4 of the Financing Plan and applied when due ("**Credit Bid**"), and all refunds will be applied by a reversal of the Credit Bid.

3. CONDITIONS OF TITLE.

3.1. ***Permitted Encumbrances.***

(a) **Permitted Exceptions**. At the Close of Escrow Port will convey interest in and to the Property to Vertical Developer [**for fee parcels**: by quitclaim deed in the form of ***Exhibit C*** attached hereto (the "**Deed**")] [**for ground lease parcels**: by "**Parcel Lease**"], subject to the following: (i) Permitted Port Title Exceptions (as defined below); (ii) all items of which Vertical Developer had actual notice or knowledge of as of the expiration of Contingency Period (subject to the provisions of ***Section 6.3*** with respect to a Port Title Defect); (iii) this Agreement and the Memorandum of this Agreement; (iv) the TMA; (v) CFD Matters attached hereto as ***Schedule 3.1***; (vi) Development Easements, if any, (vii) the Pier 70 Master Association Documents; and (viii) [**for fee parcels**: the Deed, the Restrictive Covenant, Notice of Transfer Fee Covenant, and the Transfer Fee Covenant] [**for ground lease parcels**: the Parcel Lease] (collectively, "**Permitted Encumbrances**"). [**Note: Add others as necessary/appropriate**] and otherwise free and clear of (1) rights of possession by others and [**for fee parcels**: rights of possession of Port], and (2) liens, encumbrances, covenants, assessments, easements, leases, licenses or other use agreements, and taxes.

(b) Permitted Port Title Exceptions. For purposes of this Agreement, the following will constitute "**Permitted Port Title Exceptions**":

(i) Each matter affecting title to the Property disclosed by the Title Commitment and Survey, and not otherwise objected to by Vertical Developer prior to the expiration of the Contingency Period under ***Section 6.4*** hereof;

(ii) the lien of ad valorem real estate taxes, special taxes and assessments not yet delinquent as of the date of Closing, subject to proration as herein provided;

(iii) Laws, including but not limited to building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;

(iv) the customary printed exceptions and exclusions contained in title insurance policies;

(v) matters caused by or on behalf of Vertical Developer or its Agents;

(vi) Development Easements;

(vii) Matters approved by Vertical Developer prior to Close of Escrow;

(viii) The TMA;

(ix) The Pier 70 Master Association Documents;

(x) The Restrictive Covenants;

(xi) The Notice of Transfer Fee Covenant;

(xii) The Transfer Fee Covenant; and

(xiii) The CFD Matters.

(c) Horizontal Documents. The Property forms a part of the 28-Acre Site and until the Closing, is subject to the Horizontal DDA, the Master Lease, and other documents contemplated in such agreements (collectively, the "**Horizontal Documents**"). The Horizontal Documents require the Horizontal Developer to construct and complete the Horizontal Improvements and other improvements (other than the Deferred Infrastructure in some cases) on the 28-Acre Site, including the Property, within a certain period that includes the period after the Effective Date. The Horizontal Improvements and other improvements may be necessary for the successful construction and operation of the Vertical Project. Accordingly, Vertical Developer agrees and acknowledges that (i) Horizontal Developer or its assigns may be performing material physical changes to the Property during the period prior to Closing in connection with the construction of the Horizontal Improvements (other than the Deferred Infrastructure in some cases), (ii) Port and Horizontal Developer may amend or modify the Horizontal Documents without Vertical Developer's prior consent, (iii) subject to ***Section 3.4***, prior to Closing, Port may record or cause to be recorded, Development Easements on the Property to advance the development of the Horizontal Improvements, and (iv) subject to ***Section 3.1(d)***, prior to Closing, Port may make adjustments to the legal description of the Property to exclude any portion thereof that is or is intended to become a right-of-way as the development of the 28-Acre Site advances, Vertical Developer further agrees and acknowledges that because Port is not performing any of the Horizontal Improvements including any that may affect Vertical Developer's ability to commence and complete construction of the Vertical Project, Vertical Developer will work with the Horizontal Developer to agree on any schedule of performance for the completion of any portion of the Horizontal Improvements and other improvements that may impact Vertical Developer's ability to commence and complete construction of the Vertical Project and Vertical Developer's releases and waivers against or for the benefit of the City Parties, as described in ***Section 4.4*** include any Claims related to the Horizontal Improvements.

(d) **Modifications to Legal Description of Property.** Vertical Developer acknowledges and agrees that minor modifications to the boundaries of the Property may be required to accommodate existing and proposed rights-of-way as development of the 28-Acre Site advances. Accordingly, prior to the Close of Escrow, Port may request that Vertical Developer will consent to any such minor modification, such consent not to be unreasonably withheld, conditioned or delayed so long as the modification (i) will not materially and adversely affect Vertical Developer's intended development, use or operation of the Property and the Vertical Project as reasonable determined by Vertical Developer and such intended development, use or operation is consistent with the SUD and Design for Development; and (ii) is not inconsistent with the SUD, Design for Development or Phase Submittal (if submitted) in all material respects. ***Section 12.12*** (Post Closing Boundary Adjustments) addresses boundary adjustments after Close of Escrow.

3.2. ***Restrictive Covenants.*** Vertical Developer acknowledges and agrees that Port would not Deliver the Property unless Vertical Developer agreed, among other things, to comply with (a) the obligation to construct the Vertical Project in accordance with the terms of this Agreement, (b) the obligation to construct the Deferred Infrastructure in accordance with the terms of this Agreement and the VCA, (c) the CFD Matters further described in ***Section 3.3***, **[for fee parcels**: (d) those certain restrictive covenants attached hereto as ***Exhibit C-1*** pertaining to Vertical Developer's use and operation of the Property (the "**Restrictive Covenants**") including the CFD Matters described therein, (e) those certain transfer fee covenants attached hereto as ***Exhibit C2*** (the "**Transfer Fee Covenant**") [and] **[for residential condo parcels**: (f) the obligation to develop the Vertical Project that complies with the Scope of Development attached hereto as ***Exhibit B*** (the "**Scope of Development**"). and the Schedule of Performance attached hereto as Exhibit C-3.

3.3. *CFD Matters [and Shortfall Provisions].*

(a) Prior to Close of Escrow, Vertical Developer will deliver to Port an acknowledgment (the "**Notice of Special Tax**") in the form attached hereto as ***Exhibit D*** confirming that Vertical Developer has been advised of the terms and conditions of the CFD, including that the Property is subject to the CFD assessments, as described therein.

(b) Vertical Developer will comply with all of the covenants and acknowledgements set forth in ***Schedule 3.1*** attached hereto (CFD Matters), which covenants and acknowledgements will be recorded against title to the Property and survive Close of Escrow ("**Agreement to Comply with CFD Matters**").

(c) **Shortfall Provisions**. **[Note: Include only for fee transfers.]**

(i) *Vertical Developer Waiver and Covenant*. Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Property until the IFD Termination Date. In addition, Vertical Developer covenants that should Vertical Developer initiate a Reassessment in violation of the waiver in this Section, and subject to ***Section 3.3(c)(ii)*** (Circumstances Causing Shortfall), Vertical Developer and Port will take the following measures to avoid shortfalls:

(1) Vertical Developer will pay Port the Assessment Shortfall within 20 days after Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(2) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates:

(1) the applicable IFD Termination Date; and

(2) when the Assessment Shortfall is reduced to zero.

(ii) *Circumstances Causing Shortfall*. This Section will apply if Vertical Developer initiates a Reassessment on the Property in violation of ***Section 3.3(c)(i)*** (Vertical Developer Waiver and Covenant).

(iii) *Tax Exemption*. Vertical Developer and Port do not intend for this ***Section 3.3(c)*** to affect the tax-exempt status of any bonds. Should the Tax Code change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt bonds to be deemed taxable due to the requirements under this Section, Port will release the obligations under this Section and it will be deemed severed from this Agreement.

(iv) *Mutual Expectations as to Shortfall Measures*. Neither Vertical Developer nor Port expects Port to make demand for payment under this ***Section 3.3(c)***. In light of the Parties' mutual expectations, Vertical Developer has agreed to the waiver in ***Section 3.3(c)(i)*** (Vertical Developer Waiver and Covenant).

(v) *No Negotiation*. Vertical Developer understands that Port would not be willing to enter into this Agreement without this ***Section 3.3(c)***.

3.4. *Reservation of Easements*. Before the Close of Escrow, without limiting ***Section 3.1(d)***, in order to facilitate the development of the Horizontal Improvements, Port has the right, subject to the limitations set forth below, to grant, convey or dedicate easements, and similar rights on and over the Property to utility companies, local water and sewer districts, the City, and other entities that provide utility or similar service to the Property or properties located adjacent thereto (the types of easements and similar rights described in the foregoing are, collectively, referred to herein as "**Development Easements**"); provided, however, before Port records, grants, conveys or dedicates any Development Easements hereunder, (i) if prior to the expiration of the Contingency Period, Port will furnish Vertical Developer with a copy of the proposed Development Easements for Vertical Developer's review. and (ii) if after the expiration of the Contingency Period, Port will furnish Vertical Developer with a copy of the proposed Development Easements for Vertical Developer's review and approval which approval will not be unreasonably withheld, conditioned or delayed so long as the proposed Development Easements (A) will not materially and adversely affect Vertical Developer's intended development, use or operation of the Property or the Vertical Project as reasonably determined by Vertical Developer and such intended development, use or operation is consistent with the SUD and Design for Development, (B) are not inconsistent with the SUD, Design for Development or Phase Submittal (if submitted) in any material respect, and (C) are in form and substance reasonably acceptable to Vertical Developer. Vertical Developer will approve or disapprove any proposed Development Easement that requires Vertical Developer's prior approval within twenty (20) days following its receipt thereof; if Vertical Developer fails to approve or disapprove the applicable Development Easement within such twenty (20) day period, Port may submit to Vertical Developer a second written request for approval. If Vertical Developer fails to approve or disapprove the applicable proposed Development Easement within ten (10) days after Port's second written request for approval, Vertical Developer will be deemed to have approved the proposed applicable Development Easements.

3.5. *Master Association and Transportation Management Association*. Without limiting the generality of the foregoing provisions of this ***Section 3.5***, Vertical Developer acknowledges that, prior to, concurrently with or after the Close of Escrow, the Property will be annexed into the Pier 70 Master Association by recording a supplemental master declaration in the Official Records incorporating the terms and conditions of the Pier 70 Master Declaration. Vertical Developer's obligations under this ***Section 3.5*** will survive the Close of Escrow **[add for fee parcels only: [and the recordation of the Quitclaim Deed]**. Vertical Developer further acknowledges that Vertical Developer is obligated to participate in a Transportation Management Association (the "**TMA**") that was formed to implement and administer the Transportation Demand Management Plan for the 28-Acre Site. Vertical Developer further acknowledges that the Property is or, prior to or concurrently with the Close of Escrow, **[if**

applicable: or subsequent to the Close of Escrow,] will be subject to the covenants, conditions and restrictions contained in the [for commercial parcels: Master Commercial Declaration] [for residential parcels: Master Residential Declaration] by the recording of a supplemental declaration, and Vertical Developer acknowledges that pursuant to the Pier 70 Master Declaration, Vertical Developer is or will be obligated to participate in the Pier 70 Master Association and TMA, and that Vertical Developer will be responsible for all assessments that may be owing with respect to the Property following the Close of Escrow with respect to the Master Association and TMA.

3.6. ***Vertical Developer's Responsibility for Title Insurance***. Vertical Developer understands and agrees that the right, title and interest in the Property will not exceed that vested in Port, and Port is under no obligation to furnish any policy of title insurance in connection with this transaction. Vertical Developer recognizes that any fences or other physical monument of the Property's boundary lines may not correspond to the legal description of the Property. Port will not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate survey or inspection might reveal. It is Vertical Developer's sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

[For ground lease parcels: Vertical Developer will cause to be delivered to Port at Closing, a title insurance policy insuring Port's fee interest in the Property subject to the Parcel Lease and the other Permitted Encumbrances which are applicable to the fee. Port's title insurance policy will be at Vertical Developer's sole cost.

4. INDEPENDENT INVESTIGATION; "AS IS" CONDITION; RELEASE OF PORT; PORT COVENANTS.

4.1. ***Vertical Developer's Independent Investigation***. Vertical Developer represents and warrants to Port that as of the expiration of the Contingency Period described in ***Section 6.1***, Vertical Developer will have performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through agents of Vertical Developer's choosing, including, without limitation, the following matters (collectively, the "**Property Conditions**"):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of Port's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the Property's compliance with or applicability of all Laws and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements, environmental permits and building and fire codes.

(c) The quality, nature, adequacy and physical condition in, on, around, under, and pertaining the Property, including all other physical and functional aspects in, on, around, under, and pertaining to the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition in, on, around, under, and pertaining to the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property.

(e) The suitability in, on, around, under, and pertaining to the Property for Vertical Developer's intended uses or the development of the Vertical Project. Vertical Developer represents and warrants that its intended use of the Property is [______________________].

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting in, on, around, under, and pertaining to the Property, including its development and use contemplated under this Agreement.

4.2. ***Property Disclosures***. California law requires owners to disclose to buyers or lessees the presence or potential presence of certain Hazardous Materials. Accordingly, Vertical Developer is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, any chemical identified as a "constituent of concern" in the or Pier 70 Risk Management Plan, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. [IF APPLICABLE: Further, there are Hazardous Materials located on the Property, which are described in ____________________________, copies of which have been delivered to or made available to Vertical Developer.] By execution of this Agreement, Vertical Developer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

[IF APPLICABLE: Vertical Developer acknowledges that Port has disclosed the matters relating to the Property referred to in ***Schedule 4.2*** attached hereto. Nothing contained in such schedule will limit any of the provisions of this Article or relieve Vertical Developer of its obligations to conduct a diligent inquiry hereunder, nor will any such matters limit any of the provisions of ***Section 4.3*** or ***Section 4.4***.

4.3. **"As Is With All Faults"; Disclaimer of Representations and Warranties**. VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT [**For Fee Parcels**: PORT IS SELLING AND VERTICAL DEVELOPER IS PURCHASING PORT'S INTEREST IN] [**For Ground Leases**: IT IS LEASING PURSUANT TO THE TERMS OF THE PARCEL LEASE] THE PROPERTY ON AN "**AS IS WITH ALL FAULTS**" BASIS. VERTICAL DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION. VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, INCLUDING ITS PORT, NOR ANY OF THE OTHER CITY PARTIES, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO ANY MATTERS CONCERNING THE PROPERTY, THE SUITABILITY OR FITNESS OF THE PROPERTY OR THE APPURTENANCES TO THE PROPERTY FOR THE VERTICAL PROJECT OR THE VERTICAL DEVELOPER'S INTENDED USES OR OPERATION OF THE PROPERTY, TITLE MATTERS, OR ANY OF THE PROPERTY CONDITIONS, THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, THE PROPERTY'S COMPLIANCE WITH LAWS, INCLUDING ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS RELATING TO THE PROPERTY, THE VERTICAL PROJECT, OR ANY MATTER AFFECTING THE USE, VALUE, OR OCCUPANCY IN THE PROJECT, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PROPERTY OR THE PROPOSED VERTICAL PROJECT.

4.4. ***Release of City and Port***. As part of its agreement to [for fee parcels: purchase] [for lease parcels: accept] the Property in its "**As Is With All Faults**" condition, Vertical Developer, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges, the California State Lands Commission, City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, and all of their respective officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns (collectively, the "**City Parties**" and individually, "**City Party**"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen (collectively, "**Claims**"), whether direct or indirect, known or unknown,

foreseen or unforeseen, that Vertical Developer may now have or that may arise on account of or in any way be connected with (i) the suitability of the Property for the development of the Vertical Project or Vertical Developer's and its Agents and customers' past, present and future use of the Property, (ii) title matters, or any of the property conditions, the legal, physical, geological or environmental condition of the Property (including soil and groundwater conditions), including, without limitation, any Hazardous Material in, on, under, above or about the Property, (iii) any Laws applicable thereto, including, without limitation, Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (v) construction impacts from the Horizontal Improvements, delay in completion of or failure to complete the Horizontal Improvements, defects in the Horizontal Improvements, and any other matter related to Horizontal Improvements, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Property or the Vertical Project, including all Claims arising from the joint, concurrent, active or passive negligence of any of City Parties, but excluding any intentionally harmful acts committed solely by Port or City.

Vertical Developer expressly acknowledges and agrees that the amount payable or expended by Vertical Developer hereunder does not take into account any potential liability of the City Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Agreement in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the City Parties, and Vertical Developer expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Vertical Developer or other waivers contained in this Agreement and as a material part of the consideration of this Agreement, Vertical Developer fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the City Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, the City Parties arising out of this Agreement or the uses authorized hereunder, including, any interference with uses conducted by Vertical Developer pursuant to this Agreement regardless of the cause, and whether or not due to the negligence of the City Parties.

Further, the City Parties will not, under any circumstance, be responsible or liable to Vertical Developer for, and Vertical Developer hereby releases the City Parties from, any Claims that may arise on account of or in any way be connected with the failure to complete any Horizontal Improvements (as defined in the Horizontal DDA) on or near the Property, or at any location within the 28-Acre Site, and Vertical Developer, its successors and assigns, assume the risk that any such Horizontal Improvements will not be completed.

Vertical Developer understands and expressly accepts and assumes the risk that any facts concerning the Claims released, waived, and discharged in this Agreement include known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the Claims released, waived, and discharged in this Agreement, Vertical Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

BY PLACING ITS INITIALS BELOW, VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER

WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

INITIALS: VERTICAL DEVELOPER:_____________

4.5. ***Survival***. The provisions of this ***Article 4*** will survive the expiration or earlier termination of this Agreement.

5. PRE-CLOSING COVENANTS.

5.1. *Access to Property Prior to Closing*. In connection with any entry for the purposes of performing non-invasive investigations and tests necessary to carry out the terms of this Agreement or performing visual surveys and inspections by Vertical Developer or its Agents onto the Property prior to the Close of Escrow, if the Property is not then leased to Horizontal Developer, Vertical Developer will enter into a license with Port on Port's standard form of license. If Vertical Developer desires to perform invasive testing or other due diligence on the Property, then at Port's election, the license may be adjusted by Port, in its sole discretion to account for the additional risks associated with such activities, including increased insurance coverage amounts or additional insurance coverage and broader indemnity and release provisions. If the Property is then under lease to Horizontal Developer under the Master Lease, Vertical Developer will enter into a license with Horizontal Developer in form substantially similar to Port's standard form license, as reasonably acceptable to Horizontal Developer and Vertical Developer.

5.2. ***Subdivision Maps***. From and after the expiration of the Contingency Period and prior to the Close of Escrow, Vertical Developer, at is sole cost and expense, will have the right but not the obligation to commence to process a Subdivision Map for the Property; provided, however, Vertical Developer will not cause or permit the recordation of any Final Map prior to the Close of Escrow. Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to process such Final Map in accordance with the terms of ***Section 12.9(b)***.

5.3. ***Regulatory Approvals for Vertical Project***. From and after the expiration of the Contingency Period and prior to the Close of Escrow, Vertical Development will have the right, but not the obligation, at its sole cost and expense, to pursue Regulatory Approvals for the Vertical Project including, without limitation, schematic design approval under the SUD; provided, however, Vertical Developer will not cause or permit the issuance of any such Regulatory Approval prior to the Close of Escrow if the same would be binding upon Port. Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to process such Regulatory Approvals in accordance with the terms of ***Section 12.9(b)***.

6. CONDITIONS PRECEDENT TO CLOSING OF ACQUISITION.

6.1. *Contingency Period.*

(a) **Generally**. Vertical Developer will have until 5:00 p.m. San Francisco Time on [insert date that is forty-five (45) days after the Effective Date of Agreement] to inspect and review the Property and to elect to proceed with the Delivery of the Property on and subject to the terms of this Agreement (such period being referred to herein as the "**Contingency Period**"). If Vertical Developer elects to proceed with the purchase of the Property, then Vertical Developer will, before the expiration of the Contingency Period, notify Port and Escrow Agent in writing that Vertical Developer has approved all such matters ("**Acceptance Notice**"). If Vertical Developer elects not to proceed with the purchase of the Property, then Vertical Developer must, before the expiration of the Contingency Period, deliver notice to Port that it is exercising its right to terminate this Agreement in accordance with ***Section 6.2*** (the "**Termination Notice**"). If before the end of the Contingency Period Vertical Developer fails to give Port a Termination Notice or an Acceptance Notice, then Vertical Developer will be deemed to have elected to proceed to Closing.

(b) **Objectionable Matters**. If Vertical Developer objects to any of aspect of the Property within the Contingency Period, then Vertical Developer may (but will not be obligated to) deliver to Port written notice explaining the aspects of the Property that are objectionable to Vertical Developer ("**Objection Notice**"). Port has no obligation to remove or remedy any of the items listed in the Objection Notice objectionable to Vertical Developer ("**Objectionable Items**"). Port has ten (10) days after receipt of the Objection Notice to notify Vertical Developer whether Port will remove or remedy the Objectionable Items; provided, however, if less than ten (10) days remain before the Contingency Period expires when Port receives the Objection Notice, then Port may, at its sole discretion, extend the Contingency Period by the number of days necessary for Port to have ten (10) days to respond to the Objection Notice. If Port so extends the Contingency Period, then Vertical Developer may terminate this Agreement at any time prior to the date that is one (1) business day after the expiration of such ten (10) day period if and only if Port does not agree in writing, prior to the expiration of such ten (10) day period, to remove or remedy all of the Objectionable Items to Vertical Developer's satisfaction prior to Closing.

(c) **Port Election to Remove or Remedy Objectionable Matter**. If Port elects to remedy or remove the Objectionable Items and requires additional time beyond the Closing Date to remove or remedy any of the items, the Closing Date will be delayed for so long as Port diligently pursues such removal or remedy, not to exceed thirty (30) days unless otherwise agreed by the Parties. If and when Port elects not to remove or remedy the Objectionable Item and so notifies Vertical Developer in writing, which Port may do at any time including following an initial election to pursue remedial or corrective actions, then Vertical Developer may elect to either (i) proceed to Closing in accordance with the terms of this Agreement, in which event, Vertical Developer will be deemed to have waived any objections to the Objectionable Items Port will not remove or remedy, or (ii) terminate this Agreement in accordance with ***Section 6.2,*** in each case by delivering written notice thereof to Port not later than three (3) business days after the date Port notifies Vertical Developer in writing that Port has elected not to remove or remedy the Objectionable Item. If Vertical Developer fails to notify Port of its election within such three (3) business day period, Vertical Developer shall be deemed to have elected to proceed to Closing.

6.2. ***Vertical Developer's Right to Terminate; Return of Deposit.*** If Vertical Developer elects to terminate this Agreement in accordance with ***Section 6.1(a)***, ***Section 6.1(c)***, ***Section 6.3*** or ***Section 8.1***, or ***Section 10.2***, or ***Section 10.4(a)***, (collectively, "**VD Terminable Sections**") then[**for non-Credit Bid deals**: the Deposit will be returned promptly to Vertical Developer upon notice thereof to Escrow Agent] [**for Credit Bid deals**: the Credit Bid will be reversed], Vertical Developer will have no further remedies against Port and, except for any provisions of this Agreement which expressly state that they will survive the termination of this Agreement, this Agreement will be terminated and canceled in all respects and neither Vertical Developer nor Port will have any further rights or obligations hereunder. If Vertical Developer does not duly terminate this Agreement in accordance with and within the time periods set forth in the applicable VD Terminable Sections, or if Vertical Developer waives its right to terminate this Agreement, (i) this Agreement will remain in full force and effect and Vertical Developer will have no further right to terminate this Agreement under the applicable VD Terminable Sections, and (ii) Vertical Developer will be deemed to have waived any liability of Port and any right to refuse to consummate the Closing by reason of any condition known to Vertical Developer as of the last day of the Contingency Period, or if applicable, one (1) business day following Port's delivery of written notice to Vertical Developer that Port will not remove or remedy the Objectionable Item.

6.3. ***Title Review Following Contingency Period Expiration.***

(a) If at the time scheduled for Close of Escrow any (i) possession by others, (ii) rights of possession other than those of Vertical Developer, or (iii) lien, encumbrance, covenant, assessment, easement, lease, tax or other matter which is not a Permitted Port Title

Exception, encumbers the Property and would materially and adversely affect the development of the Property ("**Port Title Defect**"), Port will have up to thirty (30) days from the date scheduled for Close of Escrow to remove the Port Title Defect. The Close of Escrow will be extended to the earlier of seven (7) Business Days after the date on which the Port Title Defect is removed or the expiration of the thirty (30) day period. If the Port Title Defect can be removed by bonding and Port has not so bonded within the thirty (30) day period, Vertical Developer may, but will not be obligated to, cause a bond to be issued. If Vertical Developer causes a bond to be issued in accordance with this ***Section 6.3(a),*** Port will reimburse Vertical Developer for the cost of such bond within thirty (30) days of demand or, at Port's option, credit such amount against the Acquisition Price payable to Port under this Agreement.

(b) If at the Closing Date, a Port Title Defect still exists, Vertical Developer may by written notice to Port either (i) terminate this Agreement and [**for non-Credit Bid deals:** receive a return of the Deposit] [**for Credit Bid deals**: the Credit Bid will be reversed] or (ii) accept Delivery of the Property. If Vertical Developer accepts Delivery of the Property subject to a Port Title Defect, the Port Title Defect will be deemed waived. If Vertical Developer does not accept Delivery of the Property and fails to terminate this Agreement within seven (7) days after the Closing Date, or any extension as provided above, Port may terminate this Agreement upon three (3) days written notice to Vertical Developer. If the Agreement is terminated under this Section the terms of ***Section 6.2*** shall apply.

6.4. ***Port's Conditions Precedent.***

(a) **Port's Conditions Precedent.** The following are conditions precedent to Port's obligation to consummate the Close of Escrow and thereby Deliver the Property to Vertical Developer:

(i) Vertical Developer will have performed all obligations under this Agreement required to be performed on its part before the Close of Escrow, no uncured Acquisition Event of Default will exist on Vertical Developer's part under this Agreement and all of Vertical Developer's representations and warranties made in ***Section 21.3*** will have been true and correct when made and will be true and correct as of the Close of Escrow. At the Close of Escrow, Vertical Developer will deliver to Port a certificate to confirm the accuracy of such representations and warranties, substantially in the form attached hereto as ***Exhibit F***.

(ii) [**Note: For Master Developer Affiliate Deals only:** The Horizontal DDA is still in effect and there is no uncured Material Breach under the Horizontal DDA or the Horizontal DDA has not been terminated due to a Material Breach.

(iii) Vertical Developer will have deposited into Escrow, [**for non-Credit Bid deals**: the balance of the Acquisition Price], [**for ground leases**: the security deposit and all other sums, including any bonds, required to be paid to Port on or prior to the effective date of the Parcel Lease pursuant to the terms thereof] and all other sums necessary to consummate the Close of Escrow pursuant to the terms of this Agreement.

(iv) [**for Credit Bid deals**: Vertical Developer will have notified Port that it consents to the balance of the Acquisition Price being Credit Bid at Closing;

(v) Vertical Developer will have deposited into Escrow each of the documents described in ***Section 7.4(b),*** each duly executed and acknowledged by Vertical Developer.

(vi) [**for ground lease parcels**: Vertical Developer will have obtained all insurance required under the Parcel Lease and will have deposited evidence thereof into Escrow.

(vii) Vertical Developer will have satisfied the submittal requirements that Vertical Developer (or Vertical Developer's contractor) is required to make before Close of

Escrow relating to Vertical Developer's obligations to comply with the Workforce Development Plan attached hereto as ***Exhibit G*** ("**Workforce Development Plan**").

(viii) Vertical Developer and Port will have executed mutual irrevocable instructions to the Escrow Agent, all in accordance with ***Article 7***.

(ix) Vertical Developer will have executed and delivered to Port a certification of compliance with San Francisco Administrative Code Chapters 12B and 12C on the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101), together with supporting documentation, and will have secured approval of the form by the City's Human Rights Commission.

(x) Vertical Developer has deposited into Escrow such evidence of authority to enter into [the Parcel Lease], this Agreement and any other Transaction Documents, as Port and the Title Company may reasonably require (including certificates of good standing, board resolutions and certificates of incumbency).

(xi) Vertical Developer will have delivered into escrow, a reaffirmation that all the representations and warranties made in ***Section 21.3*** are and remain true and correct as of the Closing Date.

(xii) [**add as applicable**: Vertical Developer will have complied with the requirements of the Housing Plan as it pertains to the Property to the extent required at Close of Escrow.]

(xiii) Horizontal Developer will have deposited into Escrow two (2) duly executed and acknowledged counterparts of each of the Development Agreement Assignment (if applicable), DDA Release and Partial Release.

(xiv) [**For ground lease parcels only**: The Title Company is irrevocably committed to issue to Port upon payment by Vertical Developer, the title insurance policy required by ***Section 3.6*** to be delivered to Port as of the Closing Date.]

(b) **Satisfaction of Port's Conditions**. The conditions precedent set forth in ***Section 6.4(a)*** are intended solely for the benefit of Port. If any such condition precedent is not satisfied on or before the Closing Date, Port's Executive Director, or, if the Executive Director determines that waiver of the condition precedent materially affects the rights, obligations, or expectations of Port, the Port Commission by resolution, will have the right in its sole discretion either to waive in writing the condition precedent in question and proceed with the Close of Escrow, or, in the alternative, to terminate this Agreement. If Vertical Developer is using reasonably diligent efforts to meet or satisfy the conditions precedent to Close of Escrow, the date for the Close of Escrow will be extended for a reasonable period or periods of time specified by Vertical Developer, but such periods in the aggregate will not extend beyond the Closing Date (unless otherwise extended by mutual agreement of the Parties) to allow such conditions precedent to be satisfied, subject to Port's further right to terminate this Agreement by the Closing Date if all such conditions precedent have not been satisfied.

6.5. ***Vertical Developer's Conditions to Closing.***

(a) **Vertical Developer Conditions Precedent**. The following are conditions precedent to Vertical Developer's obligation to consummate the Close of Escrow and accept the Property from Port under this Agreement:

(i) Port will have performed all obligations under this Agreement which Port is required to perform before the Close of Escrow and there is no Acquisition Event of Default by Port.

(ii) The Title Company is irrevocably committed to issue to Vertical Developer, upon payment by Vertical Developer, a title insurance policy satisfactory to Vertical

Developer, insuring Vertical Developer's interest in the Property subject to Permitted Encumbrances.

(iii) Port will have deposited into escrow each of the documents described in ***Section 7.4(a)***, each duly executed and acknowledged by Port.

(iv) Horizontal Developer will have deposited into escrow two (2) duly executed and acknowledged counterparts of each of the Development Agreement Assignment (if applicable), DDA Release and Partial Release.

(v) Horizontal Developer will have deposited into escrow a ground lessee's affidavit and, if required by Title Company, a mechanic's lien indemnity, in form and substance reasonably satisfactory to Horizontal Developer and Title Company.

(b) **Satisfaction of Vertical Developer's Conditions Precedent**. The conditions precedent set forth in ***Section 6.5(a)*** are intended solely for the benefit of Vertical Developer. If any such condition precedent is not satisfied on or before the Close of Escrow, Vertical Developer will have the right in its sole discretion to waive in writing the condition precedent in question and proceed with the Close of Escrow and acceptance of the Property under this Agreement. If Port is using reasonably diligent efforts to meet the conditions precedent, the date for the Close of Escrow may be extended, at Vertical Developer's sole option, for a reasonable period or periods of time specified by Vertical Developer, but such periods in the aggregate will not extend beyond the Closing Date, to allow such conditions precedent to be satisfied, subject to Vertical Developer's further right to terminate this Agreement by the Closing Date.

6.6. ***Taxes and Assessments.***

(a) **Ad Valorem Taxes and Assessments Before and After Close of Escrow**. For any period before the Close of Escrow, Vertical Developer is responsible for the payment of any ad valorem taxes (including possessory interest and special taxes) assessed by reason of this Agreement. Ad valorem taxes and assessments levied, assessed, or imposed for any period from and after the Close of Escrow, including possessory interest and special taxes, are the sole responsibility of Vertical Developer.

(b) **Possessory Interest Taxes**. Vertical Developer recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Vertical Developer may be subject to the payment of property taxes levied on such interest. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City report certain information relating to this Agreement, and any renewals of this Agreement, to the County Assessor within sixty (60) days after any such transaction, and that Vertical Developer report certain information relating to any assignment under this Agreement to the County Assessor within sixty (60) days after such assignment transaction. Vertical Developer agrees to provide such information as may be requested by Port to enable Port to comply with this requirement.

(c) **Right to Contest**. Subject to ***Section 3.3*** and the matters described therein, Vertical Developer has the right to contest the amount, validity or applicability, in whole or in part, of any ad valorem, possessory interest or other taxes and assessments levied on Vertical Developer or the Property by reason of this Agreement (collectively, "**Taxes and Assessments**") by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, prior to commencement of such contest, Vertical Developer notifies Port of such contest. Vertical Developer must notify Port of the final determination of such contest within fifteen (15) days after such determination. Subject to ***Section 3.3,*** nothing in this Agreement requires Vertical Developer to pay any Taxes and Assessments so long as Vertical Developer contests the validity, applicability or amount of such Taxes and Assessments in good faith, and so long as it does not allow the portion of the Property affected by such Taxes and Assessments to be forfeited to the entity levying such Taxes and Assessments as a result of its

nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Vertical Developer must comply with such condition as a condition to its right to contest. Vertical Developer is responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Vertical Developer must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Property may be subjected to such lien or claim. Vertical Developer is not required to pay any Taxes and Assessments being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Property. Port will not be subjected to any liability for the payment of any fines or penalties, and except as provided in the preceding sentence, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. [**for fee parcels only**: Notwithstanding the foregoing, from and after the Close of Escrow, subject to ***Section 3.3*** and the matters described therein, Vertical Developer's right to contest Taxes and Assessments will be absolute and, without limiting the generality of the foregoing, in no event will Vertical Developer be obligated to notify or provide security to Port nor will Port have a right to participate.]

(d) **Survival**. This ***Section 6.6*** will survive the expiration or earlier termination of this Agreement.

7. ESCROW AND CLOSING.

7.1. ***Escrow***. Vertical Developer and Port will deposit an executed counterpart of this Agreement with the Title Company. Port and Vertical Developer will deposit escrow instructions as appropriate to enable the Escrow Agent to comply with the terms of this Agreement. In addition, Port will deposit supplementary escrow instruction instructing Escrow Agent to apply all funds received by it in accordance with the requirements of the Financing Plan. In the event of any conflict between the provisions of this Agreement and any escrow instructions or supplementary escrow instructions, the terms of this Agreement or the Financing Plan, as applicable, will control.

7.2. ***Closing***. The Closing hereunder will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of the Title Company on the date that is [**for residential parcels**: thirty (30) days] [**for commercial parcels**: six months] after the expiration of the Contingency Period before 3:00 p.m. San Francisco time or such earlier date and time as Vertical Developer and Port may mutually agree upon in writing (the "**Target Closing Date**"). [**for residential parcels only**: Such date and time may not be extended without the prior written approval of both Port and Vertical Developer, which may be withheld in each of their sole discretion.] The "**Closing Date**" is the date that the Closing or Close of Escrow occurs.

7.3. [**for commercial parcels only**: ***Extension of Closing Date***.

(a) **Extension of Target Closing Date**. Vertical Developer has one option to extend the Target Closing Date by an additional six (6) months (the "**Extended Closing Date**") in accordance with this ***Section 7.3(a)*** by delivering written notice to Port of its election to extend the Target Closing Date to the Extended Closing Date ("**Extension Notice**"). The Target Closing Date will be extended to the Extended Closing Date (unless an earlier Closing Date is agreed to between the Parties) only if all of the following conditions are satisfied (collectively, the "**Extended Closing Date Conditions**"):

(i) There is no Vertical Developer Acquisition Event of Default, Vertical Developer Default, or Unmatured Vertical Developer Event of Default as of the date Port receives the Extension Notice and during the period after the Target Closing Date;

(ii) Port receives at least ten (10) days before the Target Closing Date, the Extension Notice; and

(iii) [**for non-Credit Bid deals**: Port receives by wire transfer on or before the Target Closing Date, an additional deposit equaling ten percent (10%) of the Acquisition Price (the "**Additional Deposit**").] [**for Credit Bid deals affiliates**: An additional deposit equaling ten percent (10%) of the Acquisition Price (the "**Additional Deposit**") will be Credit Bid on the date Port receives the Extension Notice].

If Vertical Developer does not satisfy the Extended Closing Date Conditions within the time periods set forth in this ***Section 7.3(a)*** and Closing does not occur by the Target Closing Date, then it will be deemed an Acquisition Event of Default by Vertical Developer and Port will retain the Deposit as liquidated damages.

7.4. ***Deposit of Documents***.

(a) <u>By Port</u>. At or before the Closing, Port will deposit into escrow the following items:

(i) [**For fee parcels**: the duly executed and acknowledged Deed conveying the Property to Vertical Developer subject to the Permitted Encumbrances;]

(ii) [**For ground lease parcels**: four (4) duly executed and acknowledged counterparts of the Parcel Lease and two (2) duly executed and acknowledged counterparts of the Memorandum of Lease (in the form attached to the Parcel Lease) (the "**Memorandum of Lease**");]

(iii) [two (2) duly executed and acknowledged counterpart originals of the Release of Disposition and Development Agreement in the form attached hereto as ***Exhibit H*** (the "**DDA Release**") signed by Port and Horizontal Developer;]

(iv) [two (2) duly executed and acknowledged counterpart originals of the Partial Release of Master Lease in the form attached thereto as ***Exhibit I*** (the "**Partial Release**") signed by Port and Horizontal Developer;]

(v) two (2) duly executed and acknowledged counterparts signed by Port of a memorandum of this Agreement in the form of ***Exhibit J*** attached hereto attached hereto (the "**Memorandum of VDDA**");

(vi) three (3) duly executed and acknowledged counterparts of the Development Agreement Assignment signed by Horizontal Developer and the City's Planning Director (or his or her designee) and if required, approved as to form by the City Attorney;

(vii) a duly executed owner's title affidavit in form reasonably satisfactory to Port and Title Company; and

(viii) evidence of authority to consummate the transactions contemplated by this Agreement, as the Title Company may reasonably require (including, if applicable, Port Commission and Board of Supervisors' resolutions).

(b) <u>By Vertical Developer</u>. At or before the Closing, Vertical Developer will deposit into escrow the following items:

(i) [**For ground lease parcels**: four (4) duly executed by Vertical Developer and acknowledged counterparts of the Parcel Lease and two (2) duly executed by Vertical Developer and acknowledged counterparts of the Memorandum of Lease;]

(ii) two (2) duly executed and acknowledged counterparts of the Memorandum of VDDA;

(iii) three (3) duly executed and acknowledged counterparts of the Development Agreement Assignment;

(iv) the funds necessary to consummate the Close of Escrow [**for Credit Bid deals**: (other than the Acquisition Price which is to be Credit Bid in accordance with the terms of this Agreement)];

(v) [**For fee parcels**: two (2) duly executed counterparts by Vertical Developer of the Restrictive Covenant;]

(vi) [**For fee parcels**: two (2) duly executed counterparts by Vertical Developer of the Notice of Transfer Fee Covenant and the Transfer Fee Covenant;]

(vii) [two (2) duly executed originals by Vertical Developer of the Agreement to Comply with CFD Matters; and]

(viii) two (2) duly executed originals by Vertical Developer of the Notice of Special Tax; and

(ix) evidence of authority to consummate the transactions contemplated by this Agreement, as Port and the Title Company may reasonably require (including certificates of good standing, board resolutions and certificates of incumbency).

(c) **Further Assurances**. Port and Vertical Developer will each deposit such other instruments as are reasonably required by the Escrow Agent or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

7.5. ***Steps to Close Escrow***. Port and Vertical Developer will instruct the Escrow Agent to consummate the escrow as provided herein. Upon the Close of Escrow, the Escrow Agent will record in the Official Records, in the following and no other order, the DDA Release, the Partial Release, [**for fee parcels**: the Deed, the Notice of Transfer Fee Covenant, the Transfer Fee Covenant, the Restrictive Covenants] [**for ground lease parcels**: the Memorandum of VDDA, the Memorandum of Lease], [the Agreement to Comply with CFD Matters], and any other documents reasonably required to be recorded under the terms of Regulatory Approvals. Upon Close of Escrow, Escrow Agent will deliver a settlement statement to Port and Vertical Developer [**for non-Credit Bid deals**: and deliver to Port all funds received by Escrow Agent on account of the Acquisition Price. Port will instruct the Escrow Agent to disburse the net proceeds of the Acquisition Price to the Project Payment Obligation as defined in the Financing Plan in accordance with ***Article 2*** (Flow of Funds) of the Financing Plan]. [**for Credit Bid deals**: If the Acquisition Price will be paid by Credit Bid, Port and Vertical Developer will make entries in the Developer Capital Schedule and the Port Capital Schedule to reflect the disposition of cash, proceeds deemed to have been deposited by Credit Bid as described in the Financing Plan, and any offset to Fair Market Value by the estimated Deferred Infrastructure costs.] [**confirm process**] In addition, the Title Company will issue title policies to Vertical Developer [**for ground lease parcels**: and Port] as required under ***Section 3.6***.

7.6. ***Waiver of Pre-Delivery Conditions***. Unless the Parties otherwise expressly agree at the time of Close of Escrow, all pre-Delivery conditions of the Parties will, upon Escrow, be deemed waived by the Party benefited by such condition.

7.7. ***Merger***. Upon the Close of Escrow, the terms set forth in ***Section 1*** through ***Section 10***, inclusive, of this Agreement will be deemed to have merged with the [**for fee parcels**: Deed] [**for ground lease parcels**: Ground Lease] and will be of no further force or effect, except to the extent such term expressly survives the Close of Escrow pursuant to the terms thereof. For the avoidance of doubt, the terms of ***Section 11*** through ***Section 22***, inclusive, of this Agreement will survive the Close of Escrow.

8. RISK OF LOSS PRIOR TO CLOSING.

8.1. ***Loss***. Prior to the Closing Date, Port will give Vertical Developer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event that all or any portion of the Property is

condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then Vertical Developer may, at its option to be exercised within ten (10) days of Port's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement or consummate the Delivery of the Property for the full Acquisition Price as required by the terms hereof. If Vertical Developer elects to terminate this Agreement or fails to give Port notice within such ten (10)-day period that Vertical Developer will proceed with the purchase, then this Agreement will terminate at the end of such ten (10)-day period and the terms of ***Section 6.2*** will apply.

8.2. *Insurance Proceeds and Awards*. Vertical Developer acknowledges that until immediately prior to Closing, the Property will be leased by Port to Horizontal Developer pursuant to the terms and condition of the Master Lease.

(a) **Insurance Proceeds**. Pursuant to the Horizontal Documents, Horizontal Developer is obligated to insure the Property until immediately prior to the Closing. Accordingly, Horizontal Developer may receive insurance proceeds arising from damage or destruction of the Property. If Vertical Developer desires to have any portion of such insurance proceeds available for Vertical Developer's use if it consummates the Delivery of the Property for the full Acquisition Price after damage or destruction of the Property, then Vertical Developer and Horizontal Developer must include the terms of any transfer of insurance proceeds arising from damage or destruction of the Property received by Horizontal Developer to Vertical Developer in the VCA. Port will not be obligated to purchase any third party commercial liability insurance or property insurance with regard to the Property and in no event, will Port be obligated to transfer to Vertical Developer any insurance proceeds Port may receive or credit against or reduce the Acquisition Price as a result of damage or destruction of the Property.

(b) **Condemnation Awards**. If Vertical Developer elects to consummate the Delivery of the Property for the full Acquisition Price after condemnation of a portion of the Property, Vertical Developer must negotiate with Horizontal Developer for the transfer to Vertical Developer of condemnation award proceeds Horizontal Developer may receive from the partial condemnation of the Property. Port will have no obligation to transfer any condemnation award proceeds to Vertical Developer or to credit any condemnation award proceeds against the Acquisition Price.

9. CLOSING EXPENSES.

9.1. *Expenses*. Vertical Developer will pay all fees, charges, costs and other amounts necessary for the opening and Close of Escrow (collectively, the "**Closing Costs**"), including (i) real property transfer taxes applicable to the Delivery of the Property, (ii) personal property transfer taxes, (iii) the cost of any title reports, surveys, inspections and premiums for all title insurance policies obtained by Vertical Developer, **[for ground lease parcel**: Port], and if applicable, any lender, (iv) escrow fees and recording charges, and (v) any other costs and charges of the escrow for the transaction contemplated hereby. Vertical Developer will pay the Closing Costs upon the Close of Escrow. If the Title Company requires, Vertical Developer shall pay into Escrow any such fees, costs, charges or other amounts required for the Close of Escrow under this Agreement.

9.2. *Brokers*. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction **[for non-affiliate deals only**: other than [_______________] ("**Broker**")] and that there are no other claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person **[for non-affiliate deals only:** other than Broker] brings a claim for a commission or finder's fee based on any contact, dealings, or communication with either Party, then such Party will defend the other Party from such claim, and will Indemnify the City Parties or Vertical Developer and its officers, employees, directors, owners, heirs, successors, legal representatives and assigns ("**Vertical Developer Parties**"), as applicable, from, and hold the City

Parties or Vertical Developer Parties, as applicable, against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the City Parties or Vertical Developer Parties, as applicable, incur in defending against the claim. The provisions of this Section will survive the Closing, or, if the Delivery of the Property is not consummated for any reason, any termination of this Agreement.

10. ACQUISITION DEFAULTS, REMEDIES AND LIQUIDATED DAMAGES.

10.1. ***Acquisition Event of Default.*** For purposes hereof, an "**Acquisition Event of Default**" means any of the following:

(a) Vertical Developer fails to pay when due, any amount required to be paid hereunder, and such failure continues for a period of five (5) business days following Vertical Developer's receipt of notice thereof from Port;

(b) Vertical Developer causes or permits the occurrence of a Transfer not permitted under this Agreement;

(c) All conditions to the Close of Escrow in the applicable Party's favor have been satisfied or waived, and such Party fails to consummate the Closing by the Closing Date in violation of this Agreement;

(d) Vertical Developer files a petition for relief, or an order for relief is entered against Vertical Developer, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Vertical Developer are not dismissed or stayed within one hundred eighty (180) days;

(e) A writ of execution is levied on this Agreement which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Vertical Developer, which appointment is not dismissed within one hundred twenty (120) days;

(f) Vertical Developer makes a general assignment for the benefit of its creditors; or

(g) The applicable Party violates any covenant set forth in ***Sections 1*** through and including ***Section 9*** of this Agreement, or fails to perform any other obligation to be performed by the party under ***Sections 1*** through and including ***Section 9*** of this Agreement at the time such performance is due, and such violation or failure continues without cure for more than fifteen (15) days after written notice from the other party specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such fifteen (15) day period, if such party does not within such fifteen (15) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

10.2. ***Failure to Close Escrow.*** Subject to ***Section 10.3***, if due to an Acquisition Event of Default, Escrow cannot close on the date agreed to by the Parties, the non-defaulting Party may terminate this Agreement by written notice and demand the return of its money, papers or documents deposited in Escrow (including, in the case of Vertical Developer, the return of the Deposit); provided, however, the defaulting Party will have ten (10) days after delivery of such termination notice to perform any acts required of it to permit Close of Escrow. If neither Party has performed fully to enable Close of Escrow by the time established therefor, then either Party may instruct the Title Company to return all documents and funds deposited with it to the applicable Parties in ten (10) days, unless within such ten (10) day period, both Parties perform fully all their obligations to enable Close of Escrow, in which case, the Title Company will proceed to the Close of Escrow without regard to such delay.

10.3. ***Default by Vertical Developer; Liquidated Damages***. IF THE DELIVERY OF THE PROPERTY IS NOT CONSUMMATED DUE TO AN ACQUISITION EVENT OF DEFAULT BY THE VERTICAL DEVELOPER HEREUNDER, PORT WILL BE ENTITLED, AS ITS SOLE AND EXCLUSIVE REMEDY, TO TERMINATE THIS AGREEMENT AND [**FOR NON CREDIT BID DEALS ONLY:** RETAIN THE DEPOSIT] [**FOR CREDIT BID DEALS ONLY:** MAINTAIN THE CREDIT BID OF THE DEPOSIT (IN OTHER WORDS, NOT REVERSE THE CREDIT BID)]AS LIQUIDATED DAMAGES.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THE DELIVERY OF THE PROPERTY AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: PORT: ________ VERTICAL DEVELOPER: _________

10.4. ***Port Default; Vertical Developer's Remedies***. Upon the occurrence of an Acquisition Event of Default by Port and provided there is no Acquisition Event of Default by Vertical Developer, Vertical Developer has the exclusive remedies set forth below following the expiration of applicable cure periods:

(a) **Termination**. Vertical Developer may terminate this Agreement upon ten (10) days' written notice to Port, in which event [**for non-Credit Bid deals**: Vertical Developer will receive a return of the Deposit] [**for Credit Bid Deals**: the Credit Bid will be reversed] and the parties shall have no further rights and obligations hereunder except for the obligations that expressly survive termination of this Agreement; or

(b) **Specific Performance**. Vertical Developer may institute an action for specific performance. Port acknowledges that an Acquisition Event of Default by Port under ***Section 10.1(a)*** will be conclusively deemed to be a breach of an agreement to transfer real property that cannot be adequately relieved by pecuniary compensation as set forth in California Civil Code § 3387; or

(c) **Damages**. Port will not be liable to Vertical Developer for any monetary damages whether caused by any Acquisition Event of Default by Port and in no event will Port be liable for any actual, consequential, incidental or punitive damages; provided, however, if Port is required under the terms of this Agreement to return the Deposit to Vertical Developer and Port fails to return the Deposit in Port's possession as required under this Agreement, then Vertical Developer may institute a cause of action for monetary damages equal to the amount of Deposit that has not been returned by Port.

(d) **No Other Remedies**. Other than the remedies set forth in ***Sections 10.4(a), 10.4(b), and 10.4(c),*** Vertical Developer is not entitled to any other remedies permitted by law or at equity.

11. COMPLIANCE WITH LAWS.

During the term of this Agreement, Vertical Developer will comply with, at no cost to Port, (i) all applicable Laws (taking into account any variances or other deviations properly approved and applicable to the Vertical Project), (ii) the Pier 70 Risk Management Plan, (iii) the Mitigation Monitoring and Reporting Program, (iv) the Transportation Demand Management

Plan, **[Note: Add only for parcel leases**: (v) the Parcel Lease,] and **[Note: add other requirements imposed in connection with Project Approvals, if any]**. The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. Vertical Developer acknowledges that the description of the Vertical Project attached hereto does not limit Vertical Developer's responsibility to obtain Regulatory Approvals for the Vertical Project, nor does the Vertical Project limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Vertical Developer's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Property that may be required by any Laws relating to or affecting the Property.

12. DEVELOPMENT OF VERTICAL PROJECT AND RELATED INFRASTRUCTURE.

12.1. *Project Requirements.*

[for commercial parcels and residential rental parcels only: From and after the Close of Escrow, Vertical Developer will have the right, but not the obligation, to construct the Vertical Project. If Vertical Developer so elects to construct the Vertical Project, the Vertical Project will be designed, reviewed, constructed and completed in accordance with (i) ***Article 11*** (Compliance with Laws) through and including ***Article 22*** (Definitions) of this Agreement (including the terms of any exhibits referenced therein), (ii) the Vertical Development Requirements, (iii) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen sinks in any café, restaurant or other food establishment on the Property, (iv) the Mitigation Monitoring and Reporting Program, and (v) the Workforce Development Plan (sometimes collectively referred to as the "**Project Requirements**"). Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

[Use only for residential parcels conveyed in fee: Vertical Developer must construct the Vertical Project. The Vertical Project will be designed, reviewed, constructed and completed in accordance with (i) the Scope of Development attached hereto as ***Exhibit B***, (ii) Schedule of Performance attached hereto as ***Exhibit C-3***, (iii) ***Articles 11*** (Compliance with Laws and Regulatory Approvals) through and including ***Article 22*** (Definitions) of this Agreement (including the terms of any exhibits referenced therein), (iv) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen sinks in any café, restaurant or other food establishment on the Site, (v) the Mitigation Monitoring and Reporting Program; and (v) the Workforce Development Plan (sometimes collectively referred to as the "**Project Requirements**"). Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

12.2. ***Mitigation Monitoring and Reporting Program.*** In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the Vertical Project will be in accordance with all applicable Environmental Laws and the Mitigation Monitoring and Reporting Program attached hereto as ***Exhibit K***. Vertical Developer will incorporate the Mitigation Monitoring and Reporting Program into any contract or subcontract.

12.3. ***Amendment of Development Requirements.*** Vertical Developer will not seek any amendment to the Design for Development under Section 249.79(c) of the SUD or to the

SUD under Section 302 of the Planning Code without obtaining the prior written consent of Port (and, for any proposed amendment that may impact Horizontal Developer, the Horizontal Developer), which consent may be given or withheld in each of their sole discretion. In its application to Port or the City for a Regulatory Approval under the SUD or applicable building codes, Vertical Developer will expressly identify in writing any elements of its proposed construction that requires an amendment to the Vertical Development Requirements, and state the reason for the proposed amendment. No amendment to the Vertical Development Requirements will be effective with respect to such items if an amendment was not clearly sought by Vertical Developer in writing and such amendment was not approved by the Port in its proprietary capacity.

12.4. ***Construction of Infrastructure.***

(a) Vertical Developer will be solely responsible for developing all improvements within the Property, including, without limitation, private right of ways, pedestrian walkways, infrastructure, and landscaping and hardscaping in any open space and common areas located within the Property.

(b) **[Only for certain commercial and residential rental parcels—delete for residential parcels conveyed by fee**: If Vertical Developer elects to construct the Vertical Project, Vertical Developer will also be required to construct the Deferred Infrastructure identified on ***Schedule 12.4*** attached hereto to the extent the obligation to construct the Deferred Infrastructure was wholly transferred to, and accepted by, Vertical Developer in the VCA. Horizontal Developer (or its successors or assigns with respect to the obligation to construct Horizontal Improvements in accordance with the Pier 70 Infrastructure Plan (attached to the Horizontal DDA as ***Exhibit B8***) will cause to be constructed Horizontal Improvements serving the Property, including streets and utilities necessary to serve the Property adjacent to (but not within) the Property, in accordance with the terms of the Horizontal DDA and as between Vertical Developer and Horizontal Developer, in accordance with the VCA.

(c) If Vertical Developer requires access to any real property outside of the Property in connection with the construction of the Deferred Infrastructure that is under the control of:

(i) Port, Port will enter into a license with Vertical Developer, substantially in the form attached hereto as ***Exhibit E*** (the "**License**") with Vertical Developer; or

(ii) Horizontal Developer pursuant to the Master Lease, Vertical Developer will enter into the License with Horizontal Developer.

12.5. ***Construction Standards***. All construction must be performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

12.6. ***Reports and Information***. During periods of construction, Vertical Developer will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

12.7. ***Costs of Vertical Project Sole Responsibility of Vertical Developer***. Port has no responsibility for any costs of the Vertical Project and Vertical Developer will pay (or cause to be paid) all such costs.

12.8. ***Construction Rights of Access***. During any period of construction, Port and its Agents will have the right to enter areas in which construction is being performed, on reasonable prior written notice during customary construction hours, subject to the rights of tenants and subtenants, and any safety procedures or precautions required by Vertical Developer and/or its contractors, to inspect the progress of the work; provided, however, that Port and its Agents will conduct their activities in such a way to minimize interference with Vertical Developer and its operations to the extent feasible. Nothing in this Agreement, however, will be interpreted to

impose an obligation upon Port to conduct such inspections or any liability in connection therewith.

12.9. *Regulatory Approvals.*

(a) Port Acting as Owner of Property. Vertical Developer understands and agrees that Port is entering into this Agreement in its proprietary capacity as the holder of fee title to the Property and not as a Regulatory Agency with certain police powers. Vertical Developer agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Vertical Project can be obtained. Vertical Developer agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Vertical Project will be issued by the appropriate Regulatory Agency, and Vertical Developer understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Vertical Developer will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Vertical Project and/or the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Vertical Developer, at Vertical Developer's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Vertical Project. By entering into this Agreement, Port is in no way modifying or limiting Vertical Developer's obligations to cause the Property to be developed, restored, used and occupied in accordance with all Laws. Vertical Developer further agrees and acknowledges that any time limitations on Port review or approval within this Agreement applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Vertical Developer understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Vertical Project or other matters related to this Agreement, and any such advocacy, promotion or lobbying will be done by Vertical Developer at Vertical Developer's sole cost and expense. Vertical Developer hereby waives any Claims against the City Parties, and fully releases and discharges the City Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Vertical Project; provided, however, that nothing herein is intended to affect or otherwise alter the rights, remedies and obligations of the Parties or any City Parties arising under the Development Agreement.

(b) Regulatory Approval; Conditions.

(i) Vertical Developer understands that construction of the Vertical Project, including the Deferred Infrastructure, and Vertical Developer's contemplated uses and activities on the Property, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, SFPW, SFDPH, BAAQMD, Cal OSHA and other Regulatory Agencies. Vertical Developer is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

(ii) Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Agreement, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if (1) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could encumber, restrict or adversely change the use of any Port property other than the Property, unless in each instance Port has previously approved, in Port's sole and

absolute discretion, such conditions or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions; or (2) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions or restrictions under such permit that could restrict or change the use of the Property in a manner not otherwise permitted under this Agreement or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees Port may be subject to as a result of such Regulatory Approval).

(iii) Port will provide Vertical Developer with its approval or disapproval thereof in writing to Vertical Developer within ten (10) business days after receipt of Vertical Developer's written request, or if Port's Executive Director reasonably determines that Port Commission or Board of Supervisors action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Vertical Developer's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Vertical Developer for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

(iv) Vertical Developer will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-site or require off-site improvements, removal, or other measures. Vertical Developer in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval. Vertical Developer will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Vertical Developer will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Vertical Developer to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Vertical Developer's obligation to pay all the costs of complying with any conditions or restrictions. Vertical Developer will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Property.

(v) Without limiting any other Indemnification provisions of this Agreement [**for ground lease parcels**: or the Parcel Lease], Vertical Developer will Indemnify the City Parties from and against any and all Losses which may arise in connection with Vertical Developer's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to develop and construct the Vertical Project, except to the extent that such Losses arise from the gross negligence or willful misconduct of any City Party.

(c) **Certain City Regulatory Approvals**. Horizontal Developer and the City have entered into the Development Agreement, which will govern certain land use matters under the Planning Code, including Impact Fees and Exactions. The Port and other City Agencies, with Horizontal Developer's consent, have entered into the ICA specifying certain procedures and standards that will apply when Horizontal Developer seeks Regulatory Approvals for the Horizontal Improvements from other City Agencies. A copy of the Development Agreement and the ICA have either been made available to Vertical Developer for its review at Port's offices or have been provided to Vertical Developer.

(d) **Compliance**. Vertical Developer is solely responsible for ensuring that the design and construction of the Vertical Project, including without limitation the Deferred Infrastructure (if assigned to and assumed by Vertical Developer in the VCA) comply with all Vertical Development Requirements and applicable Laws at no cost to the Port.

(e) **Noncompliance**. Vertical Developer must pay any fines and penalties and perform any corrective actions imposed for noncompliance with any applicable Laws and Indemnify the Port against any liability arising from such noncompliance, even if the Port is a co-permittee. Vertical Developer will not be entitled to reimbursement from public financing sources for any fines, penalties, and costs of corrective actions related to its construction of Deferred Infrastructure.

12.10. ***Conditions to Commencement of Construction of the Vertical Project.***

(a) **Conditions Precedent**. Unless expressly waived by Port, Vertical Developer must satisfy all of the following conditions before Commencement of Construction of the Vertical Project:

(i) *Certification.* Vertical Developer will have delivered to Port a statement certified by its officer as true, correct and complete that (1) it has obtained all Regulatory Approvals required to commence construction of the Vertical Project, (2) it has obtained sufficient financing to commence and complete the Vertical Project, and (3) it has paid the City all Impact Fees and Exactions that are required to be paid prior to commencement of construction of the Vertical Project, and (4) it has paid the Port the Master Marketing Fee in accordance with ***Section 12.16***; provided, however, without limiting any Horizontal Developer rights under ***Section 12.17***, Vertical Developer's failure to pay, or to certify that it has paid, the Master Marketing Fee will not be a Vertical Developer Default or a condition precedent to Port issuing any Regulatory Approval for the Vertical Project.

(ii) [**For ground lease parcels only**: *Insurance.* Vertical Developer has in place all insurance required during construction of the Vertical Project under the terms of the Parcel Lease and has provided Port evidence thereof.]

(iii) *Good Standing*. There will be no uncured Vertical Developer Default by Vertical Developer under this Agreement [**for ground lease parcels only**: or uncured Event of Default under the Parcel Lease].

(iv) *Security.* If any surety bond, sub-guard insurance (or other insurance product), guaranty, or other security is obtained by or for the benefit of Vertical Developer with respect to the payment of any funds or performance obligations associated with the Vertical Project, Vertical Developer will cause to have (1) Port named as a co-obligee to any bond, and (2) Port named as an additional insured or third-party beneficiary with respect to any sub-guard or other insurance product; provided, however, Port's rights under such bond, insurance product or guaranty will (x) remain subordinate to the rights of any Mortgagee and (y) not be exercised by Port before a Vertical Developer Default.

(v) [**For residential fee parcels only**: *Construction Documents*. The Construction Documents for the Vertical Project must conform to the Scope of Development. By way of example, the Vertical Project must contain the number of floors and residential units described in the Scope of Development.

(b) **Conditions for Benefit of the Port**. The conditions in ***Section 12.10(a)*** (Conditions Precedent) are solely for the benefit of Port. Only Port may waive any of those conditions, and only to the extent waivable under Law.

(c) **Effect of Failure of Condition**. Vertical Developer's failure to satisfy any condition described in ***Section 12.10(a)*** (Conditions Precedent) will not alone relieve either Party of any obligations that previously arose under this Agreement.

(d) <u>**Commencement Estoppel**</u>. Vertical Developer has the right, but not the obligation, to request an estoppel certificate from Port, at no cost to Port, for the benefit of Vertical Developer and any Mortgagee or other lender, stating that Vertical Developer has satisfied the conditions set forth in ***Section 12.10.*** Any such request will include a certification by Vertical Developer that (i) satisfies the requirements of ***Section 12.10(a)(i)*** and (ii) that to its actual knowledge, Port is not in default under this Agreement or the Parcel Lease. Port will have at least ten (10) business days to respond to such request.

12.11. ***Safety Matters.*** Vertical Developer will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining or nearby property, or the risk of injury to members of the public, caused by or resulting from the performance of its development of the Vertical Project. Vertical Developer will erect appropriate construction barricades to enclose the areas of such construction and maintain them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

12.12. ***Post-Closing Boundary Adjustments.*** The Parties acknowledge that, as development of the 28-Acre Site advances, the description of each parcel of real property may require further refinements, which may require minor boundary adjustments. The Parties agree to cooperate in effecting any required boundary adjustments consistent with ***Section 21.2*** (Technical Changes). Vertical Developer agrees that all conveyance agreements from Vertical Developers to any Transferees of the Property will include the obligation to cooperate with Port in boundary adjustments.

12.13. ***Vertical Developer Outreach Requirement.*** [<u>**Note: For new construction only (i.e. not for Buildings 2, 12 nor 21**</u>] The Vertical Project is subject to the administrative design review process set forth in the Pier 70 SUD, which provides an opportunity for third parties to review and comment on an application for design review of the Vertical Project prior to approval by the City's Planning Director. Additionally, as a requirement of this Agreement, Vertical Developer will make an informational presentation regarding the consistency of its application with the Pier 70 SUD and Design for Development to the Port's Central Waterfront Advisory Group ("**CWAG**") within 30 days of its submittal to the Port Director. Port will reasonably cooperate with Vertical Developer to schedule and notice this presentation by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation. If a CWAG meeting cannot be scheduled within 30 days of the submittal, the Vertical Developer will have the option to present at the next scheduled CWAG meeting or to host a public presentation of its design and will provide a minimum of 2 weeks' notice by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation. The presentation is for informational purposes only; any third party wishing to submit a formal public comment on the design of the Vertical Project will be required do so pursuant to the process set forth in the Pier 70 SUD. However, should the Vertical Developer desire to change its design review application to incorporate any feedback received from the presentation, any such changes submitted more than 30 days after the initial submission will reset the 60-day design review period established by the Pier 70 SUD.]

12.14. ***Information Required by the County Assessor.*** The County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable transfers of property. ***Exhibit L*** lists the information that the County Assessor expects to need in order to perform the foregoing tasks (the "**Assessor Information**"). Each Party will provide to the County Assessor any Assessor Information requested in writing by the County Assessor in the format required by the County Assessor (the "**Requested Information**") within 90 days of the applicable Party's receipt of a written request for such Requested Information. Port's sole remedy with regards to a breach of this ***Section 12.14*** is specific performance, [Port hereby waiving all other rights and remedies

available at law or equity]. Tenant waives any right to confidentiality under applicable law to the extent necessary for the County Assessor to notify Port of Tenant's failure to provide the Requested Information on a timely basis and Port to exercise its right to specific performance of Tenant's obligation. Promptly following the County Assessor's request, Port may, from time to time update the information requirements set forth in ***Exhibit L*** by providing Tenant no less than ten (10) business days' prior notice and a replacement copy of ***Exhibit L***.

12.15. **[for residential fee parcels only]** ***Creation of Condominium Regime and Sales of Condominium.***

(a) In addition to its obligations to construct the Project, Vertical Developer is responsible for creating a residential condominium regime for the Project, including preparation and filing of a Condominium Map; preparing and recording a Declaration of Conditions, Covenants and Restrictions (or equivalent instrument as determined by Vertical Developer) for the Project; and preparing all materials necessary to obtain approvals from the California Department of Real Estate for sales of the Condominiums and marketing and selling the Condominiums and obtaining all necessary regulatory approvals for such matters, including without limitation approvals from the City and the California Department of Real Estate.

(b) The Parties acknowledge that the Vertical Project is located in proximity to the Pier 70 shipyard (the "**Pier 70 Shipyard**"), a working industrial facility that contains approximately 14.7 acres of improved land and 17.4 acres of submerged lands, including floating Dry Dock#2, floating Dry Dock Eureka, and an 8k ampere Shoreside Power System. Existing and future operations at the Pier 70 Shipyard may generate certain impacts such as noise, parking congestion, truck traffic, auto traffic, odors, dust, dirt, view and visual obstructions. In order to avoid interference with the Shipyard without being subject to suits by adjacent property owners or tenants against the Port for nuisance, inverse condemnation or similar causes of action, [**for residential fee parcels only**: Vertical Developer will acknowledge the foregoing facts and understandings in the Restrictive Covenants to be recorded against the Property at Close of Escrow. In addition, Vertical Developer will include as a deed restriction in each deed out to the purchaser of a Condominium Unit,] [**for lease parcels only**: Vertical Developer will include in all of its leases at the Premises,] an acknowledgment of the foregoing impacts, and a waiver of rights relating to commencing or maintaining a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard.

12.16. ***Master Marketing Fee.*** Vertical Developer acknowledges that it is obligated to contribute to marketing efforts with respect to the 28-Acre Site undertaken by Horizontal Developer by payment of the Master Marketing Fee (as defined below). Prior to issuance of the first site permit for the Vertical Project (excluding the Deferred Infrastructure), Vertical Developer will deposit the Master Marketing Fee into the Master Marketing Fee Account (as defined in the Financing Plan) pursuant to written instructions to be provided by Port. As used herein, "**Master Marketing Fee**" means a private fee collected from each Vertical Developer prior to the issuance of the first site permit for the Vertical Project (excluding the Deferred Infrastructure) that will be equal to $1.45 per gsf of space, as adjusted on each anniversary of the Reference Date by the percentage of change between the CPI (for non-residential projects) or CPI (Residential) (for primarily residential projects), subject to a floor of no change and a maximum increase of 4.5%.

12.17. ***Limited Third-Party Beneficiary for Master Marketing Fee.*** Horizontal Developer is a third-party beneficiary of the Master Marketing Fee. If Vertical Developer has not paid the Master Marketing Fee applicable to the Vertical Project on or prior to the issuance of the first site permit for the Vertical Project (excluding the Deferred Infrastructure), Horizontal Developer may enforce Vertical Developer's obligation to pay the Master Marketing Fee.

13. **COMPLETION OF VERTICAL PROJECT.**

13.1. *Completion of Vertical Project; Certificates of Completion*. The obligations of Vertical Developer set forth in this Agreement, if any, will be deemed satisfied upon the completion of the Vertical Project, as evidenced by Port's issuance of a Certificate of Completion for the Vertical Project in accordance with the following terms:

(a) **Submittals**. When Vertical Developer reasonably believes that it has Completed the Vertical Project (excluding the Deferred Infrastructure), it may submit to Port an Architect's Certificate in the form attached as ***Exhibit M*** (or such other form as approved by the Chief Harbor Engineer), and request that the Port issue a Certificate of Completion.

(b) **Deferred Items**. With respect to the Vertical Project, if there remain uncompleted (i) customary punch list items, (ii) landscaping, or (iii) exterior finishes (to the extent Vertical Developer can demonstrate to Port's reasonable satisfaction that such finishes would be damaged during the course of later construction of interior improvements) (collectively "**Deferred Items**"), Port may reasonably condition approval of the Certificate of Completion upon provision of security or other assurances in form, substance and amount satisfactory to Port that all the Deferred Items will be diligently pursued to completion.

(c) **Port Response**. With respect to the Vertical Project, Port will respond within thirty (30) days after its receipt of the Architect's Certificate. If Port does not issue a Certificate of Completion for the Vertical Project substantially in the form of ***Exhibit N*** as requested under ***Subsection 13.1(a)*** (Submittals), then Port will deliver to Vertical Developer a notice specifying the reasons it did not issue the requested Certificate of Completion and the reasonable acts or measures that Vertical Developer must take to obtain a Certificate of Completion. Vertical Developer may submit revised Architect's Certificates and a new request for a Certificate of Completion under ***Subsection 13.1(a)*** (Submittals) at any time after completing the specified acts or measures.

(d) **Effect of Certificate of Completion**. For purposes of this Agreement only, the Certificate of Completion will be the Port's conclusive determination that Vertical Developer has Completed the Vertical Project and effective upon such issuance, other than the terms and conditions of this Agreement that expressly survive termination, this Agreement will terminate. The Port's determination will not impair Vertical Developer's release as provided in ***Article 4*** (Release), Port's right to Indemnity under Vertical Developer's obligation to Indemnify the City Parties in ***Section 12.9(b)(v)*** and ***Article 18*** (Indemnification), or Port's right, to reimbursement of Port and City Costs as provided under ***Section 14.4*** (Survival), all of which expressly survive termination of this Agreement. The Port's issuance of a Certificate of Completion will not relieve Vertical Developer or any other person from the Vertical Development Requirements or compliance with applicable Laws, including applicable building, fire, or other code requirements, conditions to occupancy of any improvement, or other applicable Laws. This ***Section 13.1(d)*** will survive the expiration or earlier termination of this Agreement.

13.2. ***[add if Vertical Developer obligated to complete Deferred Infrastructure] Completion of Deferred Infrastructure; SOP Compliance Determination***. When Vertical Developer reasonably believes that it has Completed the Deferred Infrastructure, it may submit to Port's Chief Harbor Engineer a SOP Compliance Request for such work in accordance with the procedures set forth in Section 15.7 of the Horizontal DDA. Port's Chief Harbor Engineer will process the SOP Compliance Request and issue or not issue a SOP Compliance Determination in accordance with the provisions thereof.

13.3. [for ground lease parcels] ***Record Drawings***.

(a) Vertical Developer will furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to the Vertical Project within ninety (90) days following completion of the Vertical Project. Record Drawings must be in the form of

full-size, hard paper copies and converted into electronic format as (1) full-size scanned TIF files, and (2) AutoCad files of the completed and updated construction documents, as further described below, and in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "Record Drawings" means drawings, plans and surveys showing the construction as built on the Property and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Vertical Developer fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following an additional written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such construction, and the actual, third-party cost of preparing such Record Drawings must be reimbursed by Vertical Developer to Port promptly after invoice of the same is delivered to Vertical Developer. Nothing in this Section will limit Vertical Developer's obligations, if any, to provide plans and specifications in connection with the construction under applicable regulations adopted by Port in its regulatory capacity. Vertical Developer will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Vertical Developer's request, Port will provide Vertical Developer with a release from liability for future use of the applicable materials, in a form acceptable to Vertical Developer and Port.

(b) **Record Drawing Requirements**. Record Drawings must be no less than (24" x 36"), with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing will have a Port-assigned number placed onto the title block prior to scanning. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings will be scanned as a test, prior to execution of this requirement in full.

(c) **AutoCad Requirements**. The AutoCad files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s) or DVD(s), as requested by Port. All X-REF, block and other referenced files must be coherently addressed within the environment of the compact disc or DVD, at Port's election. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting. A minimum of ten (10) complete drawing files, including all referenced files, is required to be transmitted to Port as a test, prior to execution of this requirement in full.

(d) **Changes in Technology**. Port reserves the right to revise the format of the required submittals set forth in this ***Section 13.3*** as technology changes and new engineering/architectural software is developed.

14. PORT/CITY COSTS.

14.1. ***Port Costs***. Port and the City are entitled to reimbursement for, respectively, Port Costs and City Costs incurred in connection with performing its obligations under this Agreement and any changes to this Agreement requested by Vertical Developer. Upon the request of Vertical Developer, Port and Vertical Developer will meet and confer regarding the Port Costs and City Costs likely to be incurred in connection with this Agreement. Except to the extent specifically set forth herein, Port will not be entitled to collect any other fee or reimbursement from Vertical Developer in connection with the performance of Port's obligations under this Agreement in its proprietary capacity.

14.2. ***Reporting of Port Costs***. Within ninety (90) days following the end of each calendar quarter during the term of this Agreement and within ninety (90) days following the expiration or termination of this Agreement, Port will deliver to Vertical Developer a summary of Port Costs (together with City Costs invoiced as of such date) incurred during such quarter (the "**Port Costs Report**"). The summary will be in a reasonably detailed form and will include

(i) a general description of the services performed and Port Costs incurred, (ii) cost for Port staff time and cost for the City Attorney's staff time spent on the Vertical Project, (iii) the transaction costs incurred by the City, (iv) the fees and costs incurred and paid by Port under the ICA, and (v) the fees and costs of non-City professionals and copies of invoices from such non-City professionals. Port will provide such supporting documentation as Vertical Developer may reasonably request to verify that the Port Costs were incurred in accordance with this Agreement. Port and Vertical Developer will cooperate with one another to develop a reporting format that satisfies the reasonable informational needs of Vertical Developer to justify expenditures of Port Costs in accordance with this Agreement without divulging any privileged or confidential information of Port, the City, or their respective contractors. The Port Costs Report will be binding on Vertical Developer in the absence of error demonstrated by Vertical Developer within six (6) months of Vertical Developer's receipt of the same.

14.3. ***Payment of Port Costs.*** Vertical Developer will reimburse Port for Port Costs and City Costs described in each Port Costs Report no later than thirty (30) days after its receipt of the Port Costs Report from Port. While the Parties currently anticipate the Port Cost Reports will be delivered quarterly, Port will have the right to submit monthly Port Cost Reports. The Parties will meet and confer in good faith to resolve any disputes regarding a Port Costs Report. Port will have the right to terminate or suspend any work for Vertical Developer under this Agreement upon Vertical Developer's failure to pay amounts due and owing hereunder, and continuing until Vertical Developer makes payment in full to Port.

14.4. ***Survival.*** Vertical Developer's obligation to reimburse Port for Port Costs and City Costs incurred during the term of the Agreement will survive the expiration or termination of this Agreement.

15. DEFAULTS; REMEDIES.

15.1. ***Default by Vertical Developer.*** The occurrence after the Closing Date of any one of the following events or circumstances will constitute a "**Vertical Developer Default**:"

(a) Vertical Developer causes or permits the occurrence of a Transfer not permitted under this Agreement;

(b) Vertical Developer fails to pay when due any amount required to be paid hereunder, or fails to pay any taxes or assessments on the Property when due (including CFD and IFD assessments), and such failure continues for a period of five (5) business days following Vertical Developer's receipt of notice thereof from the Port;

(c) [**for residential condo parcels**: Vertical Developer fails to cause the Commencement of Residential Construction to occur within thirty (30) months of the Closing Date, subject to Force Majeure ("**Required Construction Commencement Date**");]

(d) [**for fee parcels**: Vertical Developer is in default under the Restrictive Covenants and fails to cure the same in accordance with the terms of such documents within a reasonable period of time (or such shorter period of time as may be specified in the Restrictive Covenant, if applicable] [**for ground lease parcels**: An Event of Default (*i.e.*, after expiration of all applicable notice and cure periods) occurs under the Ground Lease];

(e) [**for ground lease parcels**: Vertical Developer files a petition for relief, or an order for relief is entered against Vertical Developer, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Vertical Developer are not dismissed or stayed within one hundred twenty (120) days;]

(f) [**for ground lease parcels**: A writ of execution is levied on this Agreement which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Vertical Developer, which appointment is not dismissed within one hundred twenty (120) days;]

(g) **[for ground lease parcels**: Vertical Developer makes a general assignment for the benefit of its creditors;]

(h) Vertical Developer fails to perform any other obligation required to be performed under this Agreement by Vertical Developer, and such failure continues beyond the period of time for cure thereof or the expiration of any grace period specified in this Agreement therefor, or if no such cure or grace period is specified, within thirty (30) days after Vertical Developer's receipt of notice thereof from the Port as appropriate, or in the case of a default that is curable but is not susceptible of cure within thirty (30) days, Vertical Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed one hundred and twenty (120) days;

(i) **[if applicable (for Deferred Infrastructure only)**: Vertical Developer fails to provide Adequate Security to the extent required under ***Schedule 12.4*** (Deferred Infrastructure), or once it has provided Adequate Security fails to maintain the same as required thereunder, and such failure continues for thirty (30) days following receipt of notice from Port (provided, that Vertical Developer will immediately, upon receiving notice from Port to such effect, suspend all activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the Property during any period during which Adequate Security are not maintained as required by this Agreement); and

(j) **[if applicable (for Deferred Infrastructure only)**: the obligor of any Adequate Security commits a default under the applicable security instrument or revokes or refuses to perform as required under the Adequate Security and Vertical Developer does not replace the Adequate Security within thirty (30) days following Vertical Developer's receipt of notice from Port; provided, that (i) Vertical Developer will immediately, upon receiving notice from Port to such effect, suspend all activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the Property during any period during which the Adequate Security is maintained as required by this Agreement, (ii) any cure period for a default under the Adequate Security will run concurrently with the above thirty (30) day period, and (iii) upon receipt by Port of any replacement Adequate Security Port will return, if in its possession or control, the original Adequate Security.

15.2. ***Default by Port.*** It will constitute a "**Port Default**" under this Agreement, if after the Closing Date, Port fails to perform any of its agreements or obligations under this Agreement, and such failure continues beyond the period of time for cure thereof or the expiration of any grace period specified in this Agreement therefor, or if no such cure or grace period is specified, within thirty (30) days after Port's receipt of notice thereof from Vertical Developer, or, in the case of a default that is curable but is not susceptible of cure within thirty (30) days, if the Port fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion, but in no event to exceed one hundred and twenty (120) days.

15.3. ***Port Remedies for Vertical Developer Default.***

(a) <u>General</u>. **[for Parcel lease parcels**: During the continuance of a Vertical Developer Default subject to ***Article 16***, and the limitations set forth in Section 25 of the Parcel Lease (including, without limitation, Section 25.4 of the Parcel Lease) Port will have all rights and remedies described in Section 25 of the Parcel Lease; provided, however, notwithstanding anything to the contrary contained in this Agreement or the Parcel Lease, any right to cure and any remedy available to Port regarding any Vertical Developer Default under the Workforce Development Plan is limited to those rights and remedies set forth in the Workforce Development Plan.

[for fee parcels: During the continuance of a Vertical Developer Default, Port will have all rights and remedies available at law or in equity, **[add for Deferred Infrastructure, if applicable:** including the right to collect on the Adequate Security] and the right to institute such

proceedings as may be necessary, including action to cure the default or to seek specific performance or other injunctive relief, and the remedies set forth in the Special Provisions; provided, however, notwithstanding anything to the contrary contained in this Agreement, any right to cure and any remedy available to Port regarding any Vertical Developer Default under the Workforce Development Plan is limited to those rights and remedies set forth in the Workforce Development Plan.

(b) [for fee parcels only: **Failure to Commence Residential Construction**. In addition to any other remedy available to Port, with respect to any Vertical Developer Default under ***Section 15.1(c)***, if Vertical Developer does not commence construction of the Vertical Project by the Required Construction Commencement Date, the provisions of ***Schedule 15.3*** will apply.

15.4. ***Vertical Developer's Remedies for Port Default.***

[For ground lease parcels: In the event of a Port Default after the Closing Date, Vertical Developer will have the remedies set forth in Section 28 of the Parcel Lease.

[For fee parcels only: In the event of a Port Default after the Closing Date, Vertical Developer's remedy is limited to an action for specific performance. Port will not be liable to Vertical Developer for any monetary damages whether caused by a Port Default and in no event will Port be liable for any actual, consequential, incidental or punitive damages.]

15.5. ***Limitation on Port Liability***. Except as expressly set forth in ***Section 10.4(c)*** and ***Section 18.4***, Port will not have any liability whatsoever for monetary damages, and in no event, will Port be liable for any actual, consequential, incidental or punitive damages, including, but not limited to, lost opportunities, lost profits or other damages of a consequential nature under this Agreement.

15.6. ***No Implied Waivers***. No waiver made by a waiving Party with respect to the performance or manner or time thereof (including an extension of time for performance) of any obligations of another Party, or of any condition to the waiving Party's own obligations, will be considered a waiver of the waiving Party's rights with respect to any obligation of another Party or any condition to the waiving Party's own obligations beyond those expressly waived in writing.

15.7. ***Limitation on Personal Liability***. No natural person, including any commissioner, member, supervisor, officer, director, employee, representative, or attorney of a Party, will be personally liable to another Party in the event of any default or for any amount that may become due to a Party under this Agreement, provided the foregoing will not limit any liabilities that exist under a security instrument or that exist under applicable law.

16. FINANCING; RIGHTS OF MORTGAGEES.

[For lease parcels: The rights and obligations of each Party related to any Mortgage (as defined in the Parcel Lease) is set forth in the Parcel Lease.

[For fee parcels: The rights and obligations of each Party related to any deed of trust, mortgage, or other security instrument against the Property is set forth in ***Schedule 16.***

17. LABOR MATTERS.

17.1. ***Compliance with Workforce Development Plan.*** In connection with the construction of the Vertical Project, Vertical Developer agrees to comply with all applicable provisions of the Workforce Development Plan.

17.2. ***Prevailing Wages***. Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Property comprise a public work if paid for in whole or part out of public funds. The terms "public work" and "paid for in whole or part out of public funds" as used in this Section are defined in California Labor

Code Section 1720 et seq., as amended. Vertical Developer agrees that any person performing labor for Vertical Developer on any public work at the Property will be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco County. Vertical Developer will include in any contract for such labor a requirement that all persons performing labor under such contract will be paid not less than the highest prevailing rate of wages for the labor so performed and a requirement that such contractor provide, and deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Property.

18. INDEMNIFICATION.

18.1. ***Indemnification by Vertical Developer.***

(a) **General Indemnity.**

(i) *Prior to Close of Escrow.* If Vertical Developer accesses the Property prior to the Closing Date, then Vertical Developer must Indemnify the City Parties against any and all Losses related to such access, including Losses related to Hazardous Materials, in accordance with the License. Vertical Developer's Indemnification obligation also includes the obligations described in ***Section 12.9(b)(v)*** related to Regulatory Approvals.

(ii) *Following Close of Escrow*: [For Lease Parcels only: Following the Close of Escrow, Vertical Developer's obligation to Indemnify the City Parties will be in accordance with the Parcel Lease]

[For Fee Parcels only: Following Close of Escrow, except to the extent caused by the gross negligence or willful misconduct of a City Party, Vertical Developer must Indemnify the City Parties against any and all Losses first arising from and after the Close of Escrow directly or indirectly from:

(1) Vertical Developer's failure to obtain any Regulatory Approval or to comply with any Regulatory Requirement for the Vertical Project or the Deferred Infrastructure as more particularly set forth in ***Section 12.9(b)(v)***;

(2) any personal injury or property damage occurring on any portion of the Property while under Vertical Developer's ownership or control;

(3) any Vertical Developer Party's acts or omissions in relation to construction, management, or operations at the Property including patent and latent defects and mechanic's or other liens to secure payment for labor, service, equipment, or material;

(4) In addition, to the foregoing, Vertical Developer will Indemnify the City Parties from and against all Losses (if a City Party has been named in any action or other legal proceeding) incurred by a City Party arising directly or indirectly out of or connected with contracts or agreements (i) to which no City Party is a party, (ii) entered into by Vertical Developer in connection with its performance under this Agreement or any Assignment and Assumption Agreement, except to the extent such Losses were caused by the gross negligence or willful misconduct of a City Party. For purposes of the foregoing sentence, no City Party will be deemed to be a "party" to a contract solely by virtue of having approved the contract under this Agreement (e.g., an Assignment and Assumption Agreement).

[For fee Parcels only: Hazardous Materials Indemnity. In addition to the Indemnity under ***Section 18.1(a)*** (General Indemnity), the terms and provisions of ***Schedule 18.1*** will apply.

18.2. ***Indemnification for Breach of Representations.*** Vertical Developer agrees to Indemnify, defend and hold harmless the City Parties from and against any and all Losses arising

from any breach of express representation, warranty or covenant by made by Vertical Developer in ***Section 21.3*** (Representations).

18.3. ***Defense of Claims***. Subject to the express terms of any Indemnity obligation hereunder, Vertical Developer's Indemnification obligations under this Agreement are enforceable regardless of the active or passive negligence of the City Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the City Parties. Vertical Developer specifically acknowledges that it has an immediate and independent obligation to defend the City Parties from any Loss that actually or potentially falls within the Indemnification obligations of Vertical Developer, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Vertical Developer and continues at all times thereafter until finally resolved. Vertical Developer's Indemnification obligations under this Agreement are in addition to, and in no way, will be construed to limit or replace, any other obligations or liabilities which Vertical Developer may have to Port in this Agreement, at common law or otherwise.

18.4. ***Limitations of Liability***. It is understood and agreed that no commissioners, members, officers, agents, or employees of the City Parties will be personally liable to Vertical Developer, nor will any direct or indirect partners, members or shareholders of Vertical Developer or its or their respective officers, directors, agents or employees (or of their successors or assigns) be personally liable to the City Parties, in the event of any default or breach of this Agreement or for any amount that may become due under the terms of this Agreement; provided, that the foregoing will not release obligations of a Person that otherwise has liability for such obligations, such as (i) the general partner of a partnership that, itself, has liability for the obligation or (ii) the obligor under any Adequate Security covering such obligation.

18.5. ***Survival of Indemnification Obligations***. The terms and provisions of this ***Article 18*** will survive the expiration or termination of this Agreement.

19. TRANSFER AND ASSIGNMENTS.

19.1. ***Before Close of Escrow***. Vertical Developer's right to [purchase the Property] [lease the Leasehold Estate] pursuant to this Agreement is personal to Vertical Developer. Accordingly, Vertical Developer may not Transfer this Agreement before Close of Escrow without the prior written consent of Port, which may be granted, withheld, or conditioned in its sole discretion and in Port's reasonable discretion for a Transfer to an Affiliate. The Parties agree that if Port consents to a Transfer, all Net Transfer Proceeds will be applied as follows:

(a) First, to pay Port's Attorneys' Fees and Costs associated with Port's review of the Transfer; and

(b) Second, all remaining proceeds to Port to be treated as Land Proceeds in accordance with Section [ ] of the Financing Plan (Exhibit C1 to the DDA)].

19.2. ***Additional Definitions***.

"**Affiliate**" means any Person directly or indirectly Controlling, Controlled by or under Common Control with the other Person in question.

"**Assignment**" means an assignment, conveyance, hypothecation, pledge (other than from and after Close of Escrow, a pledge in connection with any mezzanine financing which will not require prior Port approval), or otherwise transfer of all or any of Vertical Developer's interest in this Agreement.

"**Cash Consideration**" means (a) cash or (b) cash equivalents.

"**Control**" means with respect to any Person (a) the possession, directly or indirectly, of the power to direct or cause the direction of the day to day management, policies or activities of such Person whether through ownership of voting securities, by contract or otherwise (excluding customary limited partner or non-managing member approval rights, or (b) the ownership (direct

or indirect) of more than fifty percent (50%) of the profits or capital of another Person, or (c) the ownership (direct or indirect) of more than fifty percent (50%) of the ownership interest of such Person (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof). "**Controlled**" and "**Controlling**" have correlative meanings.

"**Excluded Transfer**" means any of the following: (a) the exercise of customary remedies under mezzanine financing of Vertical Developer or any constituent owner thereof; (b) the exercise of customary limited partner or non-managing member remedies under a partnership or limited liability company operating agreement, as applicable; (c) a change resulting from death or legal incapacity of a natural person; or (d) the sale, transfer or issuance of less than the Controlling interest of stock of Vertical Developer that is listed on a nationally or internationally recognized stock exchange in a single transaction or a related series of transactions.

"**Managing Party**" means, with respect to any Person, both (a) the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management, policies or activities of such Person (excluding customary limited partner or non-managing member approval rights) and (b) the ownership (direct or indirect) of more than ten percent (10%) of the profits or capital of such Person.

"**Net Transfer Proceeds**" means before Close of Escrow, Transfer Proceeds less the transferor Vertical Developer's reasonable Attorneys' Fees and Costs incurred by Tenant in connection with a Transfer.

"**Non-Cash Consideration**" means consideration received by Tenant in connection with a Sale that is not Cash Consideration.

"**Significant Change**" means any change in the direct or indirect ownership of Vertical Developer that results in a change in Control of Vertical Developer; provided, however, in no event will any Excluded Transfer be deemed a Significant Change.

"**Transfer**" means an Assignment or a Significant Change.

"**Transfer Proceeds**" means all consideration received by or for the account of Vertical Developer in connection with a Transfer, including Cash Consideration, the principal amount of any loan made by Vertical Developer to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price. A commitment by an owner (whether direct or indirect) of Vertical Developer to fund its share of future capital calls to construct the Project, in and of itself, will not be considered or deemed to be "**Transfer Proceeds.**"

19.3. [**<u>for leasehold parcel</u>**:] ***After Close of Escrow***. After the Close of Escrow, Vertical Developer will be permitted to Transfer all or any of its interest or rights in this Agreement in conjunction with a Transfer permitted by the Parcel Lease or approved by Port in accordance with the Parcel Lease. In addition, from and after an Assignment of all of the transferor's interest in this Agreement, the transferor will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Assignment. In no event will the transferor be liable for a new default first arising after the date of such Assignment. The effectiveness of any Assignment hereunder is not in any way to be construed to relieve the transferor vertical developer of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor vertical developer hereunder before the date of such Assignment.

19.4. [**<u>for fee parcel</u>**:] ***After Close of Escrow***.

(a) **<u>Vertical Developer's Right to Transfer Prior to Certificate of Completion</u>**.

(i) *<u>Conditions to Transfer Before Certificate of Completion</u>*. Subject to ***Sections 19.4(a)(iii) and 19.4(a)(vi) [if applicable: 19.4(a)(vii)]***, before Port's issuance of a Certificate of Completion, Vertical Developer will not suffer or permit any Transfer to occur,

without the prior written consent of Port, which consent may not be unreasonably withheld by Port if each of the following conditions is satisfied:

(1) In the case of an Assignment only, the proposed transferee executes and delivers an Assignment and Assumption Agreement, which Assignment and Assumption Agreement must contain:

(A) An express assumption by the proposed transferee, for itself and its successors and assigns, and expressly for the benefit of Port, of all of the obligations of Vertical Developer arising from or after the effective date of the Transfer under this Agreement and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to this Agreement directly relating to the Project, and an express agreement by the proposed transferee to be subject to all of the conditions and restrictions to which Vertical Developer is subject;

(B) A representation by the proposed transferee that it has conducted a thorough investigation and due diligence of the Property; and

(C) A release by the proposed transferee of the City Parties and the State Lands Indemnified Parties and waiver of any and all Losses against the City Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the City Parties arising prior to the effective date of the Transfer.

(2) In the case of a Significant Change only, Vertical Developer delivers to Port a certificate setting forth the purchaser or purchasers of the ownership interest resulting in the Significant Change, purchase price of such interest, any Net Transfer Proceeds owed to Port (if applicable), and a reaffirmation from Vertical Developer that it will continue to be obligated under all the terms and conditions of this Agreement, all certified by Vertical Developer's chief financial officer as true, accurate, and complete, the form of which is attached hereto as ***Exhibit O*** ("**Significant Change Certificate**").;

(3) All instruments and other legal documents involved in effectuating the Transfer reasonably requested by Port, including all documentation necessary for Port to confirm the amount of Port's share of Transfer Proceeds (if any), has been submitted to Port for its review and reasonable approval, or at the request of Vertical Developer, such documents are made available for Port's review at Vertical Developer's office in San Francisco;

(4) There is no Event of Default or Unmatured Event of Default on the part of Vertical Developer under this Agreement or any of the other documents or obligations to be assigned to the proposed transferee where Vertical Developer or proposed transferee have not made provisions to cure the applicable default, which provisions are satisfactory to Port in its sole discretion;

(5) Subject to ***Section 19.4(a)(i)(6)***, (A) in the case of a Significant Change, Vertical Developer must be a Qualified Transferee immediately following the consummation of such Significant Change; and (2) in the case of an Assignment, the proposed transferee is a Qualified Transferee;

(6) If Vertical Developer (in the case of a Significant Change) or proposed transferee (in the case of an Assignment) does not satisfy the Net Worth Requirement, Vertical Developer or the proposed transferee, as applicable, will have the right to deliver a Net Worth Guaranty in lieu of satisfying the Net Worth Requirement. Under the Net Worth Guaranty, the Net Worth Guarantor, among other things, will:

(A) guaranty performance of all of Vertical Developer's obligations under this Agreement in an amount not to exceed the Net Worth Requirement;

(B) covenant that it will throughout the term of the Net Worth Guaranty, maintain the Net Worth Requirement; and

(C) provide Port as of the first day of each calendar year, a statement certified by its chief financial officer, or if the Net Worth Guarantor is an individual, a certified public accountant, that the Net Worth Guarantor continues to meet the Net Worth Requirement and that to his/her actual knowledge, he/she is not aware of any facts that would cause the Net Worth Guarantor to not meet the Net Worth Requirement.

The Net Worth Guaranty will otherwise be in form and substance reasonably satisfactory to Port. The Net Worth Guaranty will terminate when the Vertical Developer benefiting from the Net Worth Guaranty meets the Net Worth Requirement. Vertical Developer and the Net Worth Guarantor will provide Port with its financial statements and other information necessary to substantiate its position that it meets the Net Worth Requirement and that the Net Worth Guaranty should terminate.

(7) Vertical Developer provides to Port an estoppel certificate substantially in the form attached hereto as ***Exhibit P***, which estoppel certificate will be effective as of the effective date of Transfer; [and]

(8) Port receives on or prior to the effective date of Transfer sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Transfer provided, however, if Port has not delivered to Vertical Developer an invoice for Attorney's Fees and Costs prior to the effective date of Transfer, Vertical Developer will reimburse Port for same within ten (10) business days of receipt of such invoice[.] [; and]

(9) **[for Horizontal Developer Affiliate: fee parcels only**: Port receives on or prior to the effective date of Transfer, (A) Port's share of Net Transfer Proceeds, as described in ***Schedule 19.4***, and (B) a settlement statement relating to the Transfer or other evidence, reasonably satisfactory to Port, of Port's share of Net Transfer Proceeds.]

(10) *Additional Definitions.*

"**Net Worth Guarantor**" means a Person satisfying the Net Worth Requirement that is the guarantor under the Net Worth Guaranty.

"**Net Worth Guaranty**" means a guaranty of performance of all the obligations under this Agreement, in an amount not to exceed the Net Worth Requirement, and otherwise in form and substance reasonably satisfactory to Port, delivered to Port by a Person satisfying the Net Worth Requirement.

(ii) *No Limitation*. It is the intent of this Agreement, to the fullest extent permitted by Law and equity, that no Transfer of this Agreement, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of the benefits under this Agreement or any rights or remedies or controls provided in or resulting from this Agreement with respect to the Premises that Port would have had, had there been no such Transfer.

(iii) *Mortgaging of Leasehold*. Notwithstanding anything herein to the contrary, at any time during the Term, Vertical Developer has the right, without Port's consent, to sell, assign, encumber or transfer its interest in this Agreement to a Lender or other purchaser in connection with the exercise of remedies under the provisions of a Mortgage, subject to the limitations, rights and conditions set forth in ***Schedule 16***.

(iv) *Limitation on Liability*. From and after an Assignment of all of the transferor's interest in this Agreement or Leasehold Estate, the transferor will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Assignment. In no event will the transferor be liable for a new default first arising after the date of such Assignment. The effectiveness of any Assignment hereunder is not in any way to be

construed to relieve the transferor tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor tenant hereunder before the date of such Assignment. In connection with any such Assignment, upon request from Transferor, Port will promptly execute documentation evidencing the foregoing release of obligations and liabilities; provided, failure to do so will not invalidate or limit the effect of the release set forth in this ***Section 19.4(a)(iv)***.

(v) *Notice of Significant Changes; Reports to Port*. Vertical Developer will promptly notify Port of any and all Significant Changes. At such time or times as Port may reasonably request, Vertical Developer must furnish Port with a statement, certified as true and correct by an officer of Vertical Developer, setting forth all of the constituent members of Vertical Developer and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Vertical Developer, their names and the extent of such interest.

(vi) *Transfers Not Requiring Port Consent Before Certificate of Completion*. Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Transfer to a Vertical Developer Affiliate or a Significant Change in which there is no change of the Managing Party of Vertical Developer, subject to all of the following conditions: (A) at least five (5) business days prior to such Transfer, Vertical Developer provides notice thereof to Port; and (B) the conditions set forth in ***Sections 19.4(a)(i)(1)—19.4(a)(i)(7) and 19.4(a)(i)(8)*** have all been met.

(vii) **[Note: Applicable for Parcels 12, 21 and 2]** *Assignment to Accommodate Sale of Historic Tax Credits or Low-Income Housing Tax Credits.* Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Transfer to an entity solely for the purpose of taking advantage of the Historic Preservation Tax Credit or Low Income Housing Tax Credit, as applicable, subject to all of the following conditions: (a) at least thirty (30) days prior to such Transfer, Tenant furnishes Port with the name of the proposed assignee, together with evidence reasonably satisfactory to Port indicating that the proposed Transfer is solely for the purpose of taking advantage of the Historic Preservation Tax Credit or Low Income Housing Tax Credit, as applicable; and (b) the conditions set forth in ***Section 19.4(a)(i)(1)-18.4(a)(1)(8)*** have all been met.

(b) Vertical Developer's Right to Transfer After Certificate of Completion. Notwithstanding any other provision of this Agreement, the provisions relating to Transfers will not apply from and after the issuance of a Certificate of Completion.

(c) No Restriction on Certain Matters. The provisions of this ***Article 19*** will not be deemed to prohibit or otherwise restrict (1) the granting of authorizations to facilitate the development, operation and use of the Property, in whole or in part, (2) the grant or creation of a Mortgage, (3) the sale or transfer of the Property or a portion thereof or any interest therein pursuant to foreclosure or the exercise of a power of sale contained in a Mortgage or any other remedial action in connection therewith, or a conveyance or transfer thereof in lieu of foreclosure or exercise of such power of sale, or (4) any Transfer to the Port, the City, City Agencies or any other Governmental Entity.

(d) Conditions Precedent. Vertical Developer's rights and obligations under this Agreement may be Transferred only (1) if the Close of Escrow has occurred, in conjunction with the Transfer of the portion of the Transferred Property to which the rights and obligations apply and (2) subject to ***Section 19.5***. The Transferee, upon taking title of the Transferred Property will succeed to all of Vertical Developer's rights (including without limitation the right to Transfer) and obligations under this Agreement.

19.5. ***Limitation on Liability***. From and after a Transfer, the Transferor will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Transfer. In no event will Transferor be liable for a new default first arising after

the date of such Transfer. The foregoing release will not in any way to be construed to relieve the Transferor of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the Transferor hereunder before the date of such Transfer. In connection with any such Transfer, upon request from Transferor, Port will promptly execute documentation evidencing the foregoing release of obligations and liabilities; provided, failure to do so will not invalidate or limit the effect of the release set forth in this ***Section 19.5***.

19.6. ***Restrictions on Port Transfer***. This Agreement will not restrict Port's right to transfer all or any portion of the Property to which it holds title. Unless otherwise prohibited by Law, Port agrees, however, not to transfer any portion of the Property or any interest therein acquired by it to any Person where such transfer would preclude Port's or Vertical Developer's performance under this Agreement or the uses, densities, rights or intensity of development contemplated under this Agreement or the Vertical Development Requirements.

19.7. ***Sale of Individual Condominium Units***. [Note: Only for Fee Parcels]

(a) **Non-Applicability of Transfer Restrictions**.

(i) Notwithstanding any other provision of this Agreement, the provisions relating to Transfers will not apply to buyers of individual Condominium Units and parking spaces for which, on or before the date of sale, a certificate of occupancy has been issued.

(ii) Except with respect to Inclusionary Units, which will be handled according to the provisions set forth in the Housing Plan, Port will not: (A) require notice or assumption of obligations for sales or subsequent re-sales of any such Condominium Units; (B) require notice or assumption of obligations, if any, for the transfer of Condominium Unit project condominium common areas; nor (C) impose any obligations with respect to completion of the improvements on individual Condominium Units for which a Certificate of Occupancy has been issued.

(iii) Vertical Developer will include in each purchase and sale agreement for a Condominium Unit a full waiver and release of any and all Claims against the City Parties resulting from Vertical Developer's completion of, or failure to complete, all or any part of the Vertical Project or Deferred Infrastructure, Horizontal Developer's completion of, or failure to complete, all or any part of the Horizontal Improvements, the Port or the City's failure to complete any part of the Pier 70 Project, and the payment by the buyer or seller of any Condominium Unit of any fees set forth in the Transfer Fee Covenant.

(iv) This ***Section 19.7*** is for the express benefit of Vertical Developer, and nothing herein will be construed to: (A) confer on an individual Condominium Unit purchaser the status of Transferee or Vertical Developer or (B) provide such purchaser, as opposed to Vertical Developer, with the right to request a Certificate of Completion for an individual Condominium Unit.

(v) No buyer of any individual Condominium Unit will be subject to the obligations or have the rights of Vertical Developer under this Agreement, the Restrictive Covenants or the obligations of Horizontal Developer under the Horizontal DDA, including without limitation, obligations for construction of the Deferred Infrastructure if applicable or the right to request a Certificate of Completion. The Parties hereto acknowledge that any of the Vertical Development Requirements that are binding on Condominium Units, including any income restrictions, will be included in recorded documents that run with the applicable Condominium Units.

20. PORT AND CITY SPECIAL PROVISIONS.

Vertical Developer will comply with the Port and City Special Provisions attached hereto as ***Exhibit Q***.

21. GENERAL PROVISIONS.

21.1. *Notices*. Any notices required or permitted to be given under this Agreement will be in writing and will be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices will be addressed as follows:

Port:

Port of San Francisco
Port General Counsel
Office of the City Attorney
Pier 1
San Francisco, CA 941111
Re: Pier 70 (**[Identify Parcel]**)

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Director of Real Estate and Development
Re: Pier 70 ([Identify Parcel])
____
____
____
____

with a copy to:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: General Counsel
Re: Pier 70 ([Identify Parcel])

Vertical Developer:

with a copy to:

or such other address as either party may from time to time specify in writing to the other party. Any notice will be deemed given when actually delivered (or when delivered is refused, if applicable) if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

21.2. ***Amendments/Technical Changes***. This Agreement may be amended or modified only by a written instrument signed by the Vertical Developer and Port. Without limiting the foregoing, Vertical Developer and the Port may correct any inadvertent error to this Agreement or any of its exhibits or implementing documents that is contrary to the Parties' intention in the identification or characterization of or any reference to any title exception, legal description, boundaries of any parcel, map or drawing, or the text, or otherwise agree to minor changes that do not materially and adversely affect the Vertical Project or Deferred Infrastructure (as reasonably determined by Vertical Developer). Any agreed change will be effected by a signed memorandum or replacement pages. A memorandum or replacement sheet will not be deemed an amendment of this Agreement or the relevant document as long as any adjustments are relatively minor and do not result in a material change as determined by the Port in consultation with counsel. Any memorandum will become a part of this Agreement or the affected document when fully executed.

21.3. ***Representations and Warranties of Vertical Developer***. Vertical Developer represents and warrants to Port as of the Effective Date and as of the Close of Escrow as follows:

(a) That Vertical Developer is a [______________________], duly organized [__________________], validly existing, and in good standing under the laws of the State of ____________. Vertical Developer has all requisite power and authority to conduct its business as presently conducted.

(b) That Vertical Developer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Vertical Developer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it will immediately notify the Port of same and the reasons therefore together with any relevant facts or information requested by Port. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) That this Agreement and all documents executed by Vertical Developer: (i) are and at the time of Closing will be duly authorized, executed and delivered by Vertical Developer; (ii) are and at the time of Closing will be legal, valid and binding obligations of Vertical Developer; and (iii) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject. The Transaction Documents will be a legal, valid and binding obligation of Vertical Developer, enforceable against Vertical Developer in accordance with its terms.

(d) That Vertical Developer has all requisite power and authority to execute and deliver the Transaction Documents and to carry out and perform all of the terms and covenants of the Transaction Documents.

(e) None of Vertical Developer's formation documents, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Vertical Developer to enter into and perform all of the terms and covenants of the Transaction Documents. Vertical Developer is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Vertical Developer of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened lawsuits or proceedings or undischarged judgments affecting Vertical Developer before any court, governmental agency, or arbitrator that is reasonably expected to materially and adversely affect the enforceability of the Transaction Documents or the business, operations, assets or condition of Vertical Developer.

(f) The execution, delivery and performance of the Transaction Documents (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Vertical Developer or by which Vertical Developer's assets may be bound or affected, (B) any Law, or (C) [the articles of incorporation or the bylaws of Vertical Developer], and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Vertical Developer (other than the lien of a Mortgage in accordance with this Agreement or the Parcel Lease).

(g) There is no material adverse change in Vertical Developer's financial condition and Vertical Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and Vertical Developer is not in default or claimed default under any agreement for borrowed money.

(h) Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties will survive the Closing Date.

21.4. ***Governing Law***. This Agreement will be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code. All legal actions related to this Agreement will be instituted in the Superior Court of the

City and County of San Francisco, State of California, in any other appropriate court in the City or, if appropriate, in the Federal District Court in San Francisco, California.

21.5. ***Merger of Prior Agreements***. This Agreement, together with the exhibits hereto, contain any and all representations, warranties and covenants made by Vertical Developer and Port and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits hereto.

21.6. ***Parties and Their Agents***. The term "**Vertical Developer**" as used herein will include the plural as well as the singular. If Vertical Developer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Vertical Developer will be joint and several. As used herein, the term "**Agents**" when used with respect to either party will include the agents, employees, officers, contractors and representatives of such party.

21.7. ***Interpretation of Agreement***.

(a) **Exhibits**. Whenever an "Exhibit" is referenced, it means an exhibit or attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

(b) **Captions**. Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of this Agreement.

(c) **Words of Inclusion**. The use of the term "including", "include", "such as" or words of similar import when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) **No Presumption Against Drafter**. This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including California Civil Code Section 1654).

(e) **Costs and Expenses**. The Party on which any obligation is imposed in this Agreement will be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) **Agreement References**. Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered section or paragraph of this Agreement or any specific subdivision of this Agreement.

21.8. ***Attorneys' Fees***. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of the Office of

the City Attorney of the City and County of San Francisco will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

21.9. ***Time of Essence.*** Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

21.10. ***No Merger.*** The obligations contained herein that expressly survive the Closing will not merge with the transfer of title to the Property but will remain in effect until fulfilled.

21.11. ***Non-Liability of City Officials, Employees and Agents.*** Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City will be personally liable to Vertical Developer, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Vertical Developer, its successors and assigns, or for any obligation of City under this Agreement.

21.12. ***Conflicts of Interest.*** Through its execution of this Agreement, Vertical Developer acknowledges that it is familiar with the provisions of Section 15.103 or City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Vertical Developer will immediately notify the City.

21.13. ***Notification of Limitations on Contributions.*** Through its execution of this Agreement, Vertical Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Vertical Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Vertical Developer further acknowledges that the prohibition on contributions applies to each Vertical Developer; each member of Vertical Developer's board of directors, and Vertical Developer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Vertical Developer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Vertical Developer. Additionally, Vertical Developer acknowledges that Vertical Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Vertical Developer further agrees to provide to City the names of each person, entity or committee described above.

21.14. ***Sunshine Ordinance.*** Vertical Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City or Port hereunder are public records subject to public disclosure. Vertical Developer hereby acknowledges that the City or Port may disclose any records, information and materials submitted to the City or Port in connection with this Agreement.

21.15. ***Tropical Hardwood and Virgin Redwood Ban.*** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

21.16. ***MacBride Principles - Northern Ireland.*** The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges companies to do business with corporations that abide by the MacBride Principles. Vertical Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

21.17. ***Severability.*** If any provision of this Agreement or the application thereof to any person, entity or circumstance will be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

21.18. ***Counterparts.*** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

21.19. ***Further Assurances.*** The parties agree to execute such instruments or to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement; provided, however, that no party will be obligated to provide such instruments and to do such further acts that would materially increase such party's liabilities hereunder or materially decrease such party's rights hereunder. The provisions of this section will survive the Closing.

21.20. . [add if the Vertical Project will include inclusionary BMR units]. ***Enforceability Waivers.*** The Horizontal DDA (including the Affordable Housing Plan), together with this Agreement, implements the California Infrastructure Financing District Law, Cal. Government Code §§ 53395 et seq. and City of San Francisco policies and includes regulatory concessions and significant public investment in the Pier 70 Project. The regulatory concessions and public investment include, without limitation, a direct financial contribution of net tax increment, the conveyance of real property without payment, and other forms of public assistance specified in California Government Code section 65915 et seq. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of [Horizontal Developer and] Vertical Developers, as contemplated by California Government Code section 65915. In light of the Port's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the Parties understand and agree that the Costa-Hawkins Act does not and will not apply to the Inclusionary Units developed at the Vertical Project under this Agreement. The Port would not enter into this Agreement without the above provisions. [Note: TBC]

21.21. ***Plans on Record with Port.*** The most recent versions of the Exhibits, as such Exhibits may be amended or supplemented from time to time in accordance with this Agreement or the terms of such Exhibits, will not be required to be recorded but will be kept on file with the Port. Full color copies of all recorded documents are also on file with the Port. All documents on file with the Port will be made available to members of the public at reasonable times in keeping with the Port's standard practices.

21.22. ***Survival; Effect of Termination.*** Any release, partial release, expiration or termination of this Agreement will not affect any provision of this Agreement that, by its express

term, is intended to survive the expiration or termination of this Agreement. Upon any termination of this Agreement before issuance of the final Certificate of Completion by reason of a Vertical Developer Default, Vertical Developer will not have the right to proceed with the Vertical Project improvements or Deferred Infrastructure and any additional construction must proceed, if at all, under the terms of a new vertical disposition and development agreement with the Port or, with the written agreement of the Port, a reinstatement of this Agreement with appropriate agreed upon revisions.

22. DEFINITIONS.

For purposes of this Agreement, initially capitalized terms will have the meanings ascribed to them in this Article:

"**28-Acre Site**" is defined in ***Recital A***.

"**Acceptance Notice**" is defined in ***Section 6.1(a)***.

"**Acquisition Price**" is defined in ***Section 2***.

"**Acquisition Event of Default**" is defined in ***Section 10.1***.

[for commercial parcels only: "**Additional Deposit**" is defined in ***Section 2.2(a)***.

[add if applicable: "**Adequate Security**" is defined in ***Schedule 12.4*** (Deferred Infrastructure).]

"**Administrative Fees**" means a fee imposed by Port or the City in their respective regulatory capacities, that is in effect at the time and payable upon the submission of an application for any permit or approval (including, without limitation, development applications submitted in accordance with the SUD or building permit applications), which is intended to cover only the estimated actual costs to City or the Port of processing that application and inspecting work undertaken pursuant to that application and to reimburse the City or the Port for its administrative costs in processing applications for any permits or approvals required under the Vertical Development Requirements.

"**Affiliate**" is defined in ***Section 19.2***.

"**Agents**" is defined in ***Section 21.6***.

"**Agreement**" means this Vertical Disposition and Development Agreement

"**Agreement to Comply with CFD Matters**" is defined in ***Section 3.3(b)***.

"**Architect**" means a design professional duly licensed by the State of California designated by Vertical Developer from time to time to issue the Architect's Certificate.

"**Architect's Certificate**" means a certificate from the Architect in the form attached hereto as ***Exhibit M***, verifying Completion of the Vertical Project (other than the Deferred Infrastructure) for purposes of the issuance of a Certificate of Completion.

[For Fee Parcel only] "**Assessment Shortfall**" means the positive difference between: (i) the amount of property taxes that would have been levied on the Property by application of the ad valorem tax on its Baseline Assessed Value, as escalated to the date of determination by annual increases and reassessment following a transfer; and (ii) the amount of property taxes actually levied on the Property after Reassessment.

"**Assignment**" is defined in ***Section 19.2***.

"**Assignment and Assumption Agreement**" means an assignment of this Agreement in substantially the form of ***Exhibit R*** attached hereto.

"**BAAQMD**" means the Bay Area Air Quality Management District.

[For Fee Parcel only] "**Baseline Assessed Value**" means the assessed value of the Property in the City Fiscal Year in which the Chief Harbor Engineer issues the related Final Certificate of Occupancy.

"**Board of Supervisors**" means the San Francisco Board of Supervisors.

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

"**Broker**" is defined in ***Section 9.2***.

"**Cal OSHA**" means the California Occupational Safety and Health Administration.

"**Certificate of Completion**" means a certificate executed by Port that Vertical Developer has Completed the construction of the Vertical Project in accordance with all the provisions of this Agreement.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**City Costs**" means the actual and reasonable costs incurred by City (other than Port) in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in ***Section 18.3***, but excluding work and fees covered by Administrative Fees.

[For Fee Parcel only] "**City Fiscal Year**" means the period beginning on July 1 of any year and ending on the following June 30.

"**City Parties**" and "**City Party**" are defined in ***Section 4.4***.

"**Claims**" means a demand made in an action or in anticipation of an action for money, mandamus, or any other relief available at law or in equity for a Loss arising directly or indirectly from acts or omissions occurring in relation to the Vertical Project or at the Property during the Term of this Agreement.

"**Close of Escrow**" and "**Closing**" are defined in ***Section 2.2(b)***.

"**Closing Costs**" is defined in ***Section 9.1***.

"**Closing Date**" means the date when Closing occurs.

"**Commence Construction**", "**Commencement of Construction**" and any variation thereof means the commencement of substantial physical construction as part of a sustained and continuous construction plan.

"**Commencement of Residential Construction**" means the groundbreaking in connection with the commencement of physical construction of the Vertical Project (excluding the Deferred Infrastructure), or a specified portion thereof, provided that the Commencement of Residential Construction will not be deemed to have occurred until commencement of permanent foundations pursuant to a valid foundation permit (excluding the conducting of test borings or indicator piles or other excavation for pre-development testing). Vertical Developer's physical work on "site improvements", as that term is defined in California Civil Code Section 3102, without its commencement of the work described above, does not constitute Commencement of Residential Construction.

"**Complete,**" "**Completed**" or "**Completion**" means completion by Vertical Developer of all aspects of the Vertical Project in accordance with the approved Construction Documents, or provision of security satisfactory to Port for any Deferred Items, and issuance of applicable temporary certificates of occupancy for the Vertical Project, together with completion of all improvements which are specifically required as a matter of law for occupancy of the entire Vertical Project under the conditions of any Regulatory Approvals.

"**Condominium**" means an estate in real property (i) consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, and/or commercial building on such real property, such as an apartment, office, store, or residential building with ground floor retail, or (ii) as defined in California Civil Code Sections 783, California Civil Code Division 4, Part 5, Chapter 1 or any successor statute or code, intended for residential or commercial/retail use, as shown on a duly filed final subdivision map, parcel map, or condominium plan of the Property or any portion thereof, and any fractional interest thereof, including, without limitation, timeshare interests as defined in California Business and Professional Code Section 11212(x) derived therefrom, lying within the Property.

"**Condominium Unit**" means each individual unit within a Condominium.

"**Construction Documents**" means (i) schematic design documents approved by Planning or Port under the SUD, (ii) site permits and/or building permits issued by the Port for the Vertical Project, and (iii) Improvement Plans for Deferred Infrastructure approved by the Port in accordance with the ICA.

"**Contingency Period**" is defined in ***Section 6.1(a).***

"**Control**" is defined in ***Section 19.2.***

[**for residential rental inclusionary projects only**] "**Costa Hawkins Act**" means Cal. Gov't Code §§ 65915-65918, as amended or replaced from time to time.

"**Credit Bid**" is defined in ***Section 2.2(d).***

[**For Fee Parcel only**] "**Current Assessed Value**" means the Property's Baseline Assessed Value as escalated or reassessed on the date of determination.

"**DDA Release**" is defined in ***Section 7.4(a)(iii).***

"**Deed**" is defined in ***Section 3.1(a).***

"**Deferred Infrastructure**" means those certain Horizontal Improvements identified in ***Schedule 12.4*** that Vertical Developer is required to construct under this Agreement.

"**Deferred Items**" is defined in ***Section 13.1(b).***

"**Deliver**" or "**Delivery**" means [**for fee parcel**: conveyance of the Property by Port to Vertical Developer by quitclaim deed] [**for ground lease parcels:** ground lease of the Property].

"**Deposit**" is defined in ***Section 2.2(a).***

"**Design for Development**" means the Pier 70 Design for Development dated [____________, 2018], as amended from time to time.

"**Development Agreement**" means that certain Development Agreement by and between the Port and Horizontal Developer, dated as of ________, 201XX and recorded in the Official Records as Document No. __________

"**Development Agreement Assignment**" means an instrument substantially in the form attached hereto as ***Exhibit S*** entered into by the City, Horizontal Developer and Vertical Developer in accordance with the requirements of Article 10 of the Development Agreement..

"**Development Documents**" means (i) the SUD and the Subdivision Map; (ii) the Design for Development; (iii) approved Construction Documents; and (v) the Development Agreement.

"**Development Easements**" is defined in ***Section 3.4.***

"**Effective Date**" means the date on which both parties have executed this Agreement as set forth below.

"**Engineer**" means a duly licensed engineer by the State of California, designated by Vertical Developer from time to time to issue the Engineer's Certificate.

"**Engineer's Certificate**" means a certificate from the Engineer for the Deferred Infrastructure in the form verifying Completion of the Deferred Infrastructure.

"**Environmental Laws**" mean all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this Lease. "**Environmental Laws**" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**Escrow Agent**" means the Title Company acting in its capacity as the escrow agent for the transaction.

[for commercial parcels only: "**Extended Closing Date**" is defined in ***Section 7.3(a)]***

"**Exactions**" is defined in the Development Agreement.

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

"**Extended Closing Date Conditions**" is defined in ***Section 7.3(a).***

"**Extension Notice**" is defined in ***Section 7.3(a).***

"**Financing Plan**" means [Horizontal DDA Exhibit C1] that governs matters relating to financing the development of the 28-Acre Site and revenue sharing between Port and Horizontal Developer.

"**Final Map**" means [a final subdivision map meeting the requirements of the Subdivision Map Act of California (Calif. Gov't Code §§ 66410-66499.37) and the Subdivision Code.

"**FOG Ordinance**" means Sections 140-140.7 of Article 4.1 of the San Francisco Public Works Code, or any subsequent amendment or replacement of the same that sets forth prohibitions, limitations and requirements for the discharge of fats, oils and grease into the City's sewer system by food service establishments.

"**Force Majeure**" means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of such Party, including, but not restricted to, acts of nature or of the public enemy, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, and unusually severe weather. Force Majeure does not include (i) failure to obtain financing or failure to have adequate funds, (ii) sea level rise, or (iii) any event that does not cause an actual delay. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make additional repairs or obtain additional Regulatory Approvals that would not have otherwise been required but for the Force Majeure Event.

"**Hazardous Material**" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. "**Hazardous Materials**" also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"**Horizontal DDA**" means that certain Disposition and Development Agreement between the City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission, and FC Pier 70, LLC, a Delaware limited liability company, dated for reference purposes only as of [______________].

"**Horizontal Developer**" is defined in ***Recital A***.

"**Horizontal Documents**" is defined in ***Section 3.1(c).***

"**Horizontal Improvements**" means those capital facilities and infrastructure built or installed in or to serve the 28-Acre Site and adjacent areas or other public purposes that are the obligation of Horizontal Developer under the Horizontal DDA, including, Site Preparation, Shoreline Improvements, Public Spaces, Public ROWs, Utility Infrastructure and Deferred Infrastructure (as those terms are defined in the Horizontal DDA).

"**ICA**" means the Interagency Cooperation Agreement between various City agencies and departments and the Port, dated as of [____________, 201XX], establishing procedures for City review of the Project.

[For Fee Parcel only] "**IFD**" is an acronym for Infrastructure Financing District No. 2 (Port of San Francisco), formed by Ordinance No. 27-16.

[For Fee Parcel only] "**IFD Termination Date**" means the respective dates on which all allocations to the IFD of Tax Increment from each Sub-Project Area and the IFD's authority to repay indebtedness with Tax Increment from each Sub-Project Area end under Appendix G-2.

"**Impact Fees**" is defined in the Development Agreement.

"**Inclusionary Units**" has the meaning set forth in the Affordable Housing Plan attached to the Horizontal DDA.

"**Indemnify**" means indemnify, protect, defend and hold harmless. "**Indemnification**" and "**Indemnity**" have correlative meanings.

"**Independent Contract Consideration**" is defined in ***Section 2.2(c).***

[for commercial parcels only: "**Initial Deposit**" is defined in ***Section 2.2(a)***.

"**Land Use Plan**" means the map attached to the DDA as Exh A4, which consists of a map showing Horizontal Developer's proposed land uses and intensity of vertical development at the 28-Acre Site as of the Effective Date of the DDA.

"**Laws**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes,

statutes, rules, regulations, ordinances, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" will refer to any or all Laws as the context may require and includes Environmental Laws.

"**License**" is defined ***in Section 12.4(c)***.

"**Losses**" means, when used in reference to a Claim, any personal injury, property damage, or other loss, liability, actual damages, compensation, contribution, cost recovery, lien, obligation, interest, injury, penalty, fine, action, judgment, award, or costs (including reasonable attorneys' fees), or reasonable costs to satisfy a final judgment of any kind, known or unknown, contingent or otherwise, except to the extent specified in this Agreement.

[for fee parcels only: "**Managing Party**" is defined in ***Section 19.4(a)(i)(10)***.]

"**Master Lease**" is defined in ***Recital A***.

"**Master Marketing Fee**" is defined in ***Section 12.16***.

"**Map Act**" means the Subdivision Map Act of California (Calif. Gov't Code §§ 66410-66499.37).

"**Memorandum of Lease**" is defined in ***Section 7.4(a)(ii)***.

"**Memorandum of VDDA**" is defined in ***Section 7.4(a)(v)***.

"**Minimum Net Worth Amount**" means Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000.00), which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Effective Date and every ten (10) years thereafter. **[NOTE: $27.5 million to increase by 5% every 5 years after Horizontal DDA execution]**

"**Mitigation Monitoring and Reporting Program**" means the Mitigation Monitoring and Reporting Program adopted by the Planning Commission for the Pier 70 Project on August 24, 2017, by Motion 19977, and attached hereto as ***Exhibit K***.

"**Mortgagee**" is defined in ***Schedule 16***.

[for fee parcels only: "**Net Worth Guarantor**" is defined in ***Section 19.4(a)(i)(10)***.]

[for fee parcels only: "**Net Worth Guaranty**" is defined in ***Section 19.4(a)(i)(10)***.

"**Net Worth Requirement**" means, with respect to a proposed transferee, the proposed transferee has a net worth (inclusive of its equity in the Property) equal to at least the Minimum Net Worth Amount, less any debt to be secured by (i) the proposed transferee's interest in the Property, or (ii) a pledge of the proposed transferee's ownership interest.

"**New Hazardous Material**" is defined in ***Section 18.1(d) of Schedule 18.1***.

"**Notice of Transfer Fee Covenant**" is that certain notice of the Transfer Fee Covenant in the form attached hereto as ***Exhibit C-2A*** and to be recorded in the Official Records.

"**Notice of Special Tax**" is defined in ***Section 3.3(a)***.

"**Objectionable Items**" is defined in ***Section 6.1(b)***.

"**Objection Notice**" is defined in ***Section 6.1(b)***.

"**Official Records**" means the official records of the City and County of San Francisco.

"**Parcel Lease**" is defined in ***Section 3.1(a)***.

"**Partial Release**" is defined in ***Section 7.4(a)(v)***.

"**Party**" means Port or Vertical Developer, as a party to this Agreement. "**Parties**" means both Port and Vertical Developer, as parties to this Agreement.

"**Permitted Encumbrances**" is defined in ***Section 3.1(a)***.

"**Permitted Port Title Exceptions**" is defined in ***Section 3.1(b).***

"**Person**" means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

"**Phase Submittal**" means a Phase Submittal approved by the Port in accordance with Section [XX] of the Horizontal DDA.

"**Pier 70 Master Association**" means the Master Association formed in accordance with the Pier 70 Master Association Documents.

"**Pier 70 Master Association Documents**" means [*insert applicable Master Declaration reference and any other relevant documents.*]

"**Pier 70 Project**" means the development of Horizontal Improvements and Vertical Improvements within the 28-Acre Site in accordance with the Horizontal DDA and Development Documents.

"**Pier 70 Risk Management Plan**" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"**Pier 70 Shipyard**" is defined in ***Section 12.15(b).***

"**Port**" or "**Port Commission**" means the San Francisco Port Commission.

"**Port Costs**" means the actual and reasonable costs incurred by Port in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in ***Section 18.3***, but excluding work and fees covered by Administrative Fees.

"**Port Costs Report**" is defined in ***Section 14.2.***

"**Port Default**" is defined in ***Section 15.2.***

"**Port Director**" means the Executive Director of the Port.

"**Port Title Defect**" is defined in ***Section 6.3(a).***

"**Project Requirements**" is defined in ***Section 12.1.***

"**Property**" is defined in ***Recital A.***

"**Property Conditions**" is defined in ***Section 4.1.***

"**Qualified Transferee**" means any transferee that satisfies each of the following criterion: (1) has, or has engaged a property manager with at least ten (10) years' experience operating [**use for commercial leases**: major commercial projects] [**use for residential parcels**: residential projects]; (2) satisfies the Net Worth Requirement; and (3) is subject to jurisdiction of the courts of the State.

[**For Fee Parcel only**] "**Reassessment**" means a reduction in ad valorem taxes assessed against the Property through a proceeding under the California Revenue & Taxation Code.

"**Regulatory Agency**" means a City Agency or federal, state, or regional body, administrative agency, commission, court, or other governmental or quasi-governmental organization with jurisdiction over any aspect of the Vertical Project or the 28-Acre Site.

"**Regulatory Approval**" means any motion, resolution, ordinance, permit, approval, license, registration, permit, utility services agreement, Final Map, or other action, agreement, or

entitlement required or issued by any Regulatory Agency with jurisdiction over any portion of the 28-Acre Site, as finally approved.

"**Requested Information**" is defined in *Section 12.14*.

[for residential condo parcels only: "**Required Construction Commencement Date**" is defined in *Section 15.1(c)*.

"**Restrictive Covenants**" is defined in *Section 3.2* hereof.

[for residential fee parcels only: "**Scope of Development**" is defined in *Section 3.2*.]

"**SFDPH**" means the San Francisco Department of Public Health.

"**SFPW**" means San Francisco Public Works.

"**Special Provisions**" means the City requirements set forth in *Article 20* hereof.

"**State Lands Indemnified Parties**" is defined in *Schedule 18.1*.

"**Subdivision Code**" means the San Francisco Subdivision Code and Subdivision Regulations, subject to applicable amendments or procedures in the Board of Supervisors Ordinance No. 224-17 and the Development Agreement.

"**Subdivision Map**" means any map that Developer submits for the Property under the Map Act and the Subdivision Code.

"**Subdivision Regulations**" means subdivision regulations adopted by San Francisco Department of Public Works from time to time and any exceptions and design modifications from the standards set forth therein to the extent necessary to achieve consistency with the Infrastructure Plan and all matters previously approved in accordance with Section 4.1(a) of the ICA.

[For Fee Parcel only] "**Sub-Project Area**" means, individually or collectively, Sub-Project Area G 2, Sub-Project Area G 3, and Sub-Project Area G 4.

[For Fee Parcel only] "**Sub-Project Area G 1**" means the sub-project area of IFD Project Area G consisting of the 20th Street Historic Core.

[For Fee Parcel only] "**Sub-Project Area G 2**" means the sub-project area of IFD Project Area G described in Appendix G-2.

[For Fee Parcel only] "**Sub-Project Area G 3**" means the sub-project area of IFD Project Area G described in Appendix G-3.

[For Fee Parcel only] "**Sub-Project Area G 4**" means the sub-project area of IFD Project Area G described in Appendix G-4.

"**SUD**" means Planning Code Section 249.79 (the Pier 70 Special Use District), as amended from time to time.

"**Survey**" means a survey required by the Title Company to issue the title insurance policy described in the Title Commitment.

"**Target Closing Date**" is defined in *Section 7.2*.

[For Fee Parcel only] "**Tax Increment**" refers to one or more of Allocated Tax Increment, Housing Tax Increment, the City Share of Tax Increment, ERAF Tax Increment, Gross Tax Increment, Port Tax Increment, and Project Tax Increment, as appropriate in the context (as such terms are defined in the Appendix to the DDA).

"**Taxes and Assessments**" is defined in *Section 6.6*.

"**Tentative Map**" means a tentative subdivision map or tentative parcel map submitted by an applicant and approved by the City in accordance with procedures under the Subdivision Code and Development Documents.

"**Termination Notice**" is defined in ***Section 6.1(a).***

"**Title Commitment**" means a commitment by the Title Company that it will issue to Vertical Developer, an A.L.T.A. extended coverage title insurance policy, with such coinsurance or reinsurance and direct access agreements as Vertical Developer may request reasonably, in an amount designated by Vertical Developer which is satisfactory to the Title Company, insuring that the leasehold estate in the Property is vested in Vertical Developer subject only to the Permitted Title Exceptions, and with such C.L.T.A. form endorsements as may be requested reasonably by Vertical Developer, all at the sole cost and expense of Vertical Developer.

"**Title Company**" is defined in ***Section 2.2(b).***

"**TMA**" is defined in ***Section 3.6***.

"**Transaction Documents**" means the documents executed and delivered by Vertical Developer pursuant to ***Section 7.4(b)***.

"**Transfer**" is defined in ***Section 19.2***.

"**Transfer Fee Covenant**" is defined in ***Section 3.1(d)***.

"**Transferee**" means any Person to which Vertical Developer assigns its rights and obligations under this Agreement in accordance with ***Article 19***.

"**Transferor**" means Vertical Developer, in its capacity as a transferor of its rights and obligations under this Agreement in accordance with ***Article 19***.

"**Unmatured Vertical Developer Event of Default**" means any default that, with the giving of notice or the passage of time, or both would constitute a Vertical Developer Acquisition Event of Default or Vertical Developer Default under this Agreement.

"**VCA**" means the Vertical Cooperation Agreement to be executed between Vertical Developer and Horizontal Developer, as the same may be amended, supplemented, modified and/or assigned from time to time). [**add as applicable**: The VCA will include, among other items, a schedule of Horizontal Developer's Horizontal Improvements obligations, Vertical Developer's Deferred Infrastructure obligations, and the timing of delivery for each] The VCA may include provisions related to (i) assignment and assumption of liability for Deferred Infrastructure, including bonding and warranty, (ii) sequencing and coordination of infrastructure work as between Horizontal Developer and Vertical Developer, (iii) each party's obligations related to liability for damage and restoration thereof, (iv) repaving obligations to the extent of any underground work performed after Horizontal Developer's paving, (v) Horizontal Developer reasonable approval over changes to horizontal construction permits obtained by Vertical Developer, (vi) Horizontal Developer self-help right if Vertical Developer fails to complete Deferred Infrastructure pursuant to an agreed upon schedule of performance, (vii) soil disposal arrangement, and (viii) mechanisms for Vertical Developer to submit Deferred Infrastructure costs to Horizontal Developer for reimbursement through Financing Plan (exclusive of fines, penalties, corrective actions).

"**VD Terminable Sections**" is defined in ***Section 6.2.***

"**Vertical Developer**" is defined in the preamble to this Agreement.

"**Vertical Developer Default**" is defined in ***Section 15.1***.

"**Vertical Development Requirements**" means those certain requirements for development of the Property that are contained in: (i) the Development Documents; (ii) [for fee parcels: the

Restrictive Covenants] [for ground lease parcels: the Parcel Lease]; (ii) approved Construction Documents; and (iii) this Agreement.

"**Vertical Project**" is defined in ***Recital H***.

"**Workforce Development Plan**" is defined in ***Section 6.4(a)(vii)***.

[SIGNATURES ON FOLLOWING PAGE]

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: ______________________________
[NAME]
Executive Director

Endorsed by Port Resolution No. 17-43 and Board Resolution No. 401-17

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: ______________________________
[NAME OF DEPUTY]
Deputy City Attorney

VERTICAL DEVELOPER:

____
a ______________________________

By: ______________________________
[NAME]

Its: ______________________________

EXHIBIT A

REAL PROPERTY DESCRIPTION

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

[To be attached prior to execution]

EXHIBIT B

<u>VERTICAL PROJECT</u>

[If ground lease parcel:

[If fee parcel: Scope of Development]

[To bc attached prior to execution]

EXHIBIT C

[If ground lease parcel: **FORM OF PARCEL LEASE]**

[To be attached prior to execution using form of Parcel Lease attached as **Exhibit D3 to Horizontal DDA**]

[If fee parcel: **FORM OF QUITCLAIM DEED**

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

____
____
____
Attn: __________________

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

(Space above this line reserved for Recorder's use only)

Documentary Transfer Tax of $_____ based upon full market value of the property without deduction for any lien or encumbrance

QUITCLAIM DEED WITH RESTRICTIONS
AND EASEMENT RESERVATIONS
[(Assessor's Parcel No. _______)]

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), pursuant to [Ordinance No. _____________, adopted by the Board of Supervisors on _____________, 20___ and approved by the Mayor on _____________, 20___], subject to the reservations in their Quitclaim Deed hereby RELEASES, REMISES AND QUITCLAIMS to

___________________________________ ("Vertical Developer"), any and all right, title and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property").

[NOTE: ADD RESERVATIONS AND RESTRICTIONS AS APPLICABLE. IF RESTRICTIONS OR OTHER COVENANTS OR OBLIGATIONS OF GRANTEE, ADD GRANTEE AS SIGNATORY TO DEED.]

Executed as of this _____ day of _____________, 20__.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through
the SAN FRANCISCO PORT COMMISSION

By: ______________________________
[NAME]
Executive Director

Endorsed by Port Resolution No. ____

and Board Resolution No. _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: ______________________________
[NAME OF DEPUTY]
Deputy City Attorney

[If required: DESCRIPTION
CHECKED/APPROVED:]

By: ______________________________
[NAME]
City Engineer

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

State of California)
) ss
County of San Francisco)

On _______________, before me, __________________________, a notary public in and for said State, personally appeared __________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature ______________________ (Seal)

[If ground lease parcel: **RESERVED**]

[If fee parcel:

EXHIBIT C-1

RESTRICTIVE COVENANTS

[***Note to draft: The Restrictive Covenants for any Residential Condominium Parcel will be tailored to each fee conveyance of residential condo parcels, but will address the following matters as applicable. The Transfer Fee Covenant and Notice of Transfer Fee Covenant will be recorded separately.***]

1. Scope of Development: A restriction on the use of the property (residential condominium), including maximum number of residential units that will continue during the term of the DDA.

2. Parking: A restriction on the maximum number of off-street parking spaces allocated to the Property, including a requirement for the Vertical Developer to record in the Official Records a Notice of Special Restrictions against the Development Parcel at the time of the issuance of the Certificate of Occupancy that will permanently limit the number of off-street parking spaces to the lesser of the number of parking spaces allocated to the parcel in the Restrictive Covenants or the number of parking spaces actually constructed on the Property at the time of the issuance of such Certificate of Occupancy.

3. Workforce requirements: Compliance with the Construction Workforce Requirements under Section III.C of the Workforce Development Plan (**DDA Exhibit B4**).

4. Associated Public Benefits: Compliance with any Associated Public Benefits allocated to the residential condominium project pursuant to the DDA, which may include one or more of the following:

4.1. Childcare facilities (**DDA § 7.18**). Compliance with the childcare requirements of Section 7.18 if designated in accordance with the DDA on any of the residential parcels identified as potential childcare locations shown on the map attached to the DDA as **Exhibit B7**.

4.2. Priority Retail along Slipways Commons (**DDA § 7.20**). Compliance with the provisions regarding "Priority Retail" for any residential condominium buildings that are developed on Parcels E1, E2 or E3.

5. Pier 70 Shipyard Acknowledgement. An acknowledgement of Pier 70 Shipyard impacts, as provided in Section 12.15 of the Vertical DDA.

6. CFD and Assessment Matters. An acknowledgement of the CFD and Assessment Matters as described in Schedule 3.1 attached to the Vertical DDA.

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

8. Mitigation Monitoring and Reporting Program. Compliance with provisions of the MMRP, as may be amended or revised from time to time, as applicable to operations and subsequent construction.

9. Transportation Demand Management Plan. Compliance with applicable provisions of the Transportation Demand Management Plan, as may be amended or revised from time to time.

10. Enforcement. The Restrictive Covenants will be in favor of the City, acting by and through the Port Commission, and may not be amended or terminated without a written instrument signed by the Port.

11. Release. No buyer of any individual Condominium Unit will be subject to the obligations under the Restrictive Covenants, which will be released at close of escrow for the applicable unit; provided, however, that the matters in Section 5 (Pier 70 Shipyard Acknowledgement) and 7 (Environmental Covenants) will be included in recorded documents that run with the applicable Condominium Units. For any commercial Condominium Units, the matters in Section 4 (Associated Benefits) will also be included in recorded documents (e.g. a deed or separate notice of special restrictions) that run with each of the commercial Condominium Units.

EXHIBIT C-2

FORM OF TRANSFER FEE COVENANT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	

(SPACE ABOVE LINE FOR RECORDER'S USE)

APN:

[NOTE: Civ. Code 1098.5(b) requires legal description and assessor's parcel number for the affected real property]

PAYMENT OF TRANSFER FEE REQUIRED

DECLARATION IMPOSING TRANSFER FEE COVENANT AND LIEN

THIS DECLARATION IMPOSING TRANSFER FEE COVENANT AND LIEN (this "**Covenant**") is made as of this ___ day of _______, 20XXX (the "**Effective Date**"), by and between **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), and [**BUYER'S ENTITY NAME AND INFORMATION**] ("**Declarant**"). Port and Declarant are collectively referred to as the "**Parties**", or each individually, a "**Party**".

RECITALS

A. Port and Declarant have entered into that certain Vertical Disposition and Development Agreement, dated [___________, 20XXX], ("**VDDA**") for the property located in the City and County of San Francisco more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"). The Property is a portion of the area generally known as Pier 70 (the "**Project Site**"). It is anticipated that the Property will be developed with residential and commercial condominium units. Declarant will be the initial owner of all the residential and commercial condominium units.

B. Port is a department of the City and County of San Francisco and manages in trust for the people of the State of California, 7½ miles of San Francisco Bay shoreline stretching from Hyde Street Pier in the north to India Basin in the south. Port's responsibilities include promoting maritime commerce, navigation, and fisheries; restoring the environment; and providing public recreation and promoting the statutory trust imposed by the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, and commonly referred to as the "**Burton Act**" (collectively, the "**Public Trust**"). The Burton Act provided for the transfer from the State of California, subject to specified terms, conditions and reservations, to the City, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

C. The Property is located in the Southern Waterfront area of the Port of San Francisco's Waterfront Land Use Plan, which area stretches from Pier 70 in the north to India Basin in the south.

D. Pursuant to the VDDA, Declarant has acknowledged and agreed that as material consideration for Port's conveyance of the Property to Declarant, Port would, among other things, receive Transfer Fees in perpetuity from the sale of the Condominiums on the Property after (but not including) the first sale, as further described in this Covenant, to be evidenced by this Covenant recorded on the Property.

E. The Transfer Fees will be used by the Port to promote Public Trust purposes and uses on property within the Port's jurisdiction.

NOW THEREFORE, Declarant hereby declares the existence of a perpetual covenant to pay Transfer Fees, and imposes upon each Condominium developed on the Property a lien to secure payment of Transfer Fees in accordance with the following terms and conditions:

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

1.1 "**Condominium**" means an estate in real property (i) consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial, and/or retail building on such real property, such as an apartment, office, or store, or (ii) as defined in California Civil Code Sections 783, California Civil Code Division 4, Part 5, Chapter 1 or any successor statute or code, intended for residential or commercial/retail use, as shown on a duly filed final subdivision map, parcel map, or condominium plan of the Property or any portion thereof, and any fractional interest thereof, including, without limitation, timeshare interests as defined in California Business and Professional Code Section 11212(x) derived therefrom, lying within the Property.

1.2 "**Dispute**" means any disagreement between the Parties, or any Owner and Port, concerning the amount, obligation to pay or other issue concerning the Transfer Fees under this Agreement or concerning any other dispute arising under this Covenant.

1.3 "**Escrow Holder**" means any title company, trust company, or other Person serving as an escrow holder or agent for the Transfer of a Unit.

1.4 "**Foreclosure Trustee**" has the meaning given in Section 7.3 below.

1.5 "**First Mortgage**" means any Mortgage with lien priority over any other Mortgage.

1.6 "**Mortgagee**" has the meaning given in Section 5.1 below.

1.7 "**Notice of Lien**" has the meaning given in Section 7.3 below.

1.8 "**Official Records**" means the official records of the City and County of San Francisco, State of California.

1.9 "**Owner**" means the Person or Persons holding record title to the Unit.

1.10 "**Person**" means a natural individual or any entity with the legal right to hold title in real property.

1.11 "**Property**" means the property described in Exhibit A.

1.12 "**Purchase Price**" means the gross consideration given by the transferee to the transferor in connection with a Transfer (defined below), including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the Transferor that is not paid in consideration for the Transfer but is a pass-through to such third-party (*e.g.* title

insurance cost), further excluding any Transfer Fee payable hereunder, and without any other deduction or offset of any kind.

1.13 **"Recorded"** means the recordation, filing or entry of a document in the Official Records.

1.14 **"Transfer"** means the sale or exchange of a Condominium (including, without limitation, the sale or exchange of a fractional interest therein or timeshare thereof) or a lease with a term of thirty five (35) years or longer. "Transfer" shall not include:

(a) Any sale, transfer, assignment, or conveyance that is exempt from payment of the real property transfer tax under the San Francisco Business and Tax Regulations Code, Article 12-C, Sections 1105 (but only with respect to the exemption set forth in the first sentence thereof), 1106, 1108, 1108.1, 1108.2, 1108.3, 1108.4, or 1108.5.

(b) The reservation by Declarant of easements, access rights or licenses, water rights or other similar rights benefitting or encumbering any of the Units, or any subsequent transfer of any such easements or rights;

(c) Any transfer of real property to any public agency, entity or district, or any utility service provider; or

(d) Any transfer to an association (defined in Section 4080 of the California Civil Code) of common area (defined in Section 4095 of the California Civil Code);

1.15 **"Transfer Fee"** has the meaning given in ***Section 2.1 below.***

1.16 **"Unit"** has the meaning given in ***Section 2.1 below.***

2. **TRANSFER FEES.**

2.1 Transfer Fee Imposed and Amount. Upon each Transfer of a Condominium unit (each, a "Unit") there shall be due and payable to the Port a fee equal to one and one half percent (1½%) of the Purchase Price of the Unit (the "Transfer Fee") in perpetuity; provided, however, that no Transfer Fee shall be due and payable with respect to the initial Transfer of any Unit. Examples of the amount of the Transfer Fee that would be payable, as specifically required by Section 1098.5(b)(2)(C) of the California Civil Code, are as follows:

Purchase Price	Transfer Fee	Transfer Fee Due Port
$250,000	X 0.015	$3,750
$500,000	X 0.015	$7,500
$750,000	X 0.015	$11.250

2.2 When Due and Paid. Subject to ***Section 2.9 below***, with respect to any voluntary conveyance of a Unit, a Transfer Fee shall be due and payable upon recordation (or other delivery) of the instrument of conveyance that constitutes a Transfer. With respect to any involuntary conveyance that constitutes a Transfer or conveyance by operation of law that constitutes a Transfer, a Transfer Fee shall be due and payable upon demand by Port, or upon recordation of any instrument vesting title in the transferee(s), whichever occurs first, and the transferee(s) shall notify Port of the occurrence of such transfer within a reasonable time after such Transfer occurs, or after obtaining actual knowledge thereof. If a Transfer Fee is not paid when due hereunder, and such failure continues for ten (10) days after notice from Port to the Owner of record, Port may pursue any remedies for failure to pay as set forth in ***Sections 7.1, 7.3, 7.4, and 7.5.***

2.3 ***Port Release***. Upon receipt of a timely notice of Transfer in accordance with ***Section 2.8 below***, Port shall execute and deliver into each escrow established for delivery of the instrument of conveyance that triggers the Transfer Fee obligation, an instrument duly acknowledged and in recordable form (the "Port Release"), acknowledging the full payment and satisfaction of the Transfer Fee obligation for the applicable Unit Transfer and releasing any claims arising out of the applicable Transfer for failure to pay the Transfer Fee subject to the following conditions:

(a) Port shall have received the timely notice of Transfer in accordance with ***Section 2.8 below***;

(b) The Transfer Fee amount is verified by Port pursuant to the escrow demand procedures of ***Section 2.10 below***; and

(c) Escrow Holder has agreed that the Port Release will not be released from Escrow and recorded until the Escrow Holder has received confirmation from Port that Port has received the applicable Transfer Fee.

2.4 ***Payment by Escrow Holder/Delivery of Port Release***. The Transfer Fee shall be paid to Port directly out of escrow established for delivery of the instrument of conveyance that triggers the Transfer Fee obligation. The transferor and transferee shall, and hereby do, irrevocably instruct any Escrow Holder holding funds for a Transfer to pay the Transfer Fee to the Port at the address set forth in Section 10 below, or at Port's election upon prior notice to the Escrow Holder, by wire transfer, from the proceeds of the Transfer at the close of escrow; provided, however, the failure of the Escrow Holder to do so shall not relieve the transferor or transferee of the obligation to pay the Transfer Fee. The transferor and transferee shall execute all documents reasonably requested by the Escrow Holder to confirm this instruction and effectuate such payment on or before the close of escrow. In addition, Declarant and any subsequent Owner shall place in escrow, with any agreement by which it Transfers a Unit, escrow instructions which specifically state, among other things, that the Escrow Holder shall pay the Transfer Fee to the Port out of the proceeds of the sale at the closing. Escrow Holder is hereby instructed by Port to record and deliver to Owner the Port Release upon the sale of the applicable Unit and payment of the applicable Transfer Fee to Port. Port shall execute all documents reasonably requested by the Escrow Holder before close of escrow to confirm this instruction and effectuate such recordation and delivery of the Port Release.

2.5 ***Transferor and Transferee Jointly and Severally Liable***. The obligation to pay the Transfer Fee for each Transfer is a joint and several obligation of the transferor and the transferee in each transaction. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay in any manner they so choose.

2.6 ***Late Charges and Interest***. The Transfer Fee due Port in connection with an applicable Transfer shall be considered late if not paid within ten (10) business days after recordation of the instrument of conveyance for such applicable Transfer. A late fee of one-half of one percent (0.50%) of the Transfer Fee shall apply thereafter for each day such payment is late, up to a maximum of ten percent (10%) of the Transfer Fee. In addition, any Transfer Fee not paid within twenty-five (25) business days following recordation of the instrument of conveyance shall thereafter bear interest at the rate of ten percent (10%) per annum until paid. However, interest shall not be payable on late fees imposed or to the extent such payment would violate any applicable usury or similar law.

2.7 ***Covenant to Pay and Creation of Lien***. Each Owner of an interest in a Unit, by acceptance of a deed or other instrument of conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it is so expressed in any such deed or other instrument of conveyance, hereby covenants and agrees to pay the Transfer Fee to Port in connection with each Transfer by which an Owner acquires or conveys such Unit. The Transfer Fee, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of

collection thereof, as hereinafter provided, shall be a lien and charge upon the Unit the transfer of which gives rise to the Transfer Fee.

2.8 Mandatory Notice. Every Owner must notify Port within the earlier of: (i) twenty (20) days after execution of a contract to Transfer a Unit, or (ii) five (5) days prior to the effective date of the Transfer. Such notice shall be provided to the Port's address for notice set forth in Article 9 below, and shall be enclosed in an envelope marked prominently: "NOTICE OF UNIT TRANSFER-PIER 70." Such notice shall be substantially in the form attached hereto as Exhibit B and will include: (i) the name and address of the transferor (ii) the name and address of the transferee; (iii) an identification of the Unit being Transferred; (iv) the Purchase Price; (v) the amount of the Transfer Fee that is due and the formula for calculating the same; (vi) the proposed closing or effective date; (vii) the name, address and phone number of the Escrow Holder for the Transfer; (viii) and the name of the escrow officer. If any of the information set forth above is not available when the notice is originally sent to Port, the Owner shall notify Port as soon as such information becomes available. In addition, each Owner shall accurately update Port if any of such information provided shall change on or prior to the closing of effective date of the Transfer.

2.9 Exchange Transfer. If a particular transaction involves more than one Transfer solely because the Unit is held for an interim period by an accommodation party as part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Transfer Fee must be paid in connection therewith, and the accommodation party shall not have any liability for payment of such Transfer Fee.

2.10 Escrow Demand. The Port is hereby authorized as a third party beneficiary of any such escrow to submit a demand into escrow for payment of the Transfer Fee and for any information about the Transfer (such as the date of closing and purchase price) that has not previously been provided to the Port; provided that Port's failure to place such demand shall not affect the obligation of the parties to cause the Transfer Fee to be paid to Port or operate as a waiver of the right of Port to receive the Transfer Fees. The demand shall state (a) either the amount of the Transfer Fee that is due or the formula for calculating the amount of the Transfer Fee that is due, and (b) that the Transfer Fee is due and payable upon recordation (or other delivery) of the instrument of conveyance. The transferor and transferee shall execute any and all escrow documents reasonably requested by Port or Escrow Agent to effectuate the release and payment of Transfer Fee to Port.

BY ACQUIRING TITLE TO A UNIT, EACH OWNER OF A UNIT HEREBY IRREVOCABLY INSTRUCTS ANY ESCROW HOLDER HOLDING FUNDS FOR THE TRANSFER OF THE UNIT TO PAY THE TRANSFER FEE TO THE PORT FROM THE PROCEEDS OF SALE OF THE UNIT, AS SET FORTH HEREIN.

3. BINDING EFFECT. Declarant hereby declares that the Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the rights, reservations, restrictions, covenants, conditions and equitable servitudes contained in this Covenant. The rights, reservations, restrictions, covenants, conditions and equitable servitudes set forth in this Covenant will (1) run with and burden each Unit within the Property in perpetuity and will be binding upon all persons having or acquiring any interest in any Unit or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Property and any interest therein; (3) inure to the benefit of and be binding upon Declarant, Port, each Owner, and their respective successors-in-interest; and (4) may be enforced by Declarant, Port, each Owner, and their respective successors-in-interest. The Parties hereby acknowledge and agree that the obligation to pay a Transfer Fee upon the Transfer of any Unit is not a personal covenant or obligation of Declarant, and that where Declarant is not a transferor, Declarant shall not be obligated to pay any Transfer Fee regarding any Unit.

4. **USES OF THE TRANSFER FEES**. Port shall deposit the Transfer Fees into the Port's Harbor Fund, to be used solely for Public Trust purposes benefitting lands under Port jurisdiction. Declarant believes that the services, activities, and improvements to be provided by Port under this Section will enhance the value of and will benefit all the land in the specified area, including all Units existing or to be created on the Property. Each Owner who acquires a Unit by such acquisition agrees to and acknowledges the statements made in this Section.

5. **MORTGAGES.**

5.1 ***Rights of Mortgagees***. Nothing in this Covenant, and no default by an Owner in payment of Transfer Fees, shall defeat or render invalid the rights of the holder of any mortgage or the beneficiary of any deed of trust appearing of record as an encumbrance on any Unit (such holder or beneficiary, collectively "Mortgagee;" and such recorded mortgage or deed of trust, collectively "**Mortgage**") made in good faith and for value, provided that after the foreclosure or transfer in-lieu of foreclosure of any such Mortgage, such Unit shall remain subject to this Covenant.

5.2 ***Subordination to First Mortgages***. Subject to ***Section 5.1***, the rights and obligations of the Parties hereunder concerning any Unit shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Unit; provided, however, that the foregoing subordination shall not apply to Transfer Fees that are not paid when due (i) arising from the Transfer that gave rise to the Recorded First Mortgage, or (ii) described in a Notice of Lien filed at least 21 days prior to the date of recordation of the Recorded First Mortgage.

5.3 ***Effect of Foreclosure***. No foreclosure of a Mortgage on a Unit or a transfer in lieu of foreclosure shall impair or otherwise affect Port's right to pursue payment of any Transfer Fee due in connection with the Transfer of that Unit from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Unit or the purchaser thereof from liability for any Transfer Fees thereafter becoming due or from the lien therefor.

6. **ESTOPPEL CERTIFICATE**. Within ten (10) days of the receipt of a written request of any Owner of a Unit for which no Transfer Fee is due and owing and as to which Unit Port holds no lien, Port shall deliver to such Owner an executed estoppel certificate certifying that no Transfer Fee is due and owing for such Unit and that Port holds no lien against such Unit.

7. **ENFORCEMENT.**

7.1 ***Remedies***. Port shall be entitled to any and all rights and remedies available at law or equity in order to collect the Transfer Fees owed it, including but not limited to, specific performance.

7.2 ***Small Claims Court***. Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Any party may submit the Dispute to such court.

7.3 ***Enforcement by Lien***. Without limiting any other right or remedy, there is hereby created a claim of lien, with power of sale, on each and every Unit, or any fractional interest therein that is the subject of a Transfer, to secure prompt and faithful performance of each Owner's obligations under this Covenant for the payment to Port of the Transfer Fees, together with interest thereon, and all late charges, interest, and costs of collection which may be paid or incurred by the Port in connection therewith, including reasonable attorneys' fees. If payment of the Transfer Fee is not made to Port within ten (10) days after notice from Port to the Owner of record, then at any time after the delinquency unless cured, Port may elect to file and record in the Official Records a notice of default and claim of lien against the Unit of the defaulting Owner ("**Notice of Lien**"). Such Notice of Lien shall be executed and acknowledged by the Port's Executive Director or his or her designee, and shall contain substantially the following information:

(a) The name of the defaulting Owner,

(b) A legal description of the Unit;

(c) The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

(d) A statement that the Notice of Lien is made pursuant to this Covenant; and

(e) A statement that a lien is claimed against the Unit in the amount stated, and that the Port has elected to foreclose the lien against the Unit.

Upon such recordation of a duly executed original or copy of such Notice of Lien and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective.

7.4 ***Foreclosure of Lien***. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) (the "Foreclosure Trustee") shall be a title company or other neutral third party with prior trustee experience appointed by Port. Port shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Unit acquired at such sale subject to the provisions of this Covenant. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

7.5 ***Proceeds of Sale***. The proceeds of any foreclosure, trustee's or judgment sale provided for in this Covenant shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Transfer Fees hereunder or any liens, shall be paid to each Mortgagee in their respective order of priority to satisfy any outstanding lien, with any remaining balance to be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Unit free from the sums or performance claimed (except as stated in this section) but otherwise subject to the provisions of this Agreement; and no such sale or transfer shall relieve such Unit or the purchaser thereof from liability for any Transfer Fees, other payments or performance thereafter becoming due or from the lien therefore as provided for in this section. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the defaulting Owner.

7.6 ***Cure of Default***. Upon the timely curing of any default for which a Notice of Lien was filed by Port, the Port is hereby authorized to record an appropriate release of such lien in the Official Records.

8. AMENDMENT.

8.1 The Port may record against the Property an assignment and notice in order to assign its rights hereunder to, and to specifically identify, its successor in interest in the event that the lands of the Port are transferred to the State of California or any other agency, in which event this Covenant will be deemed to be so modified.

8.2 This Covenant may be amended by Declarant and the Port to impose an equivalent system of fees in the form of a special tax, assessment or other levy pursuant to an agreement with the City and County of San Francisco; provided, however, that in no event shall any such superseding structure, covenant, lien or other arrangement (a) impose upon Declarant, the Property, or the Units any greater liability or obligation than the liabilities and obligations provided for herein, or (b) impose an obligation for payment of any amounts to an "association," as defined in California Civil Code Section 4080, or a "community service organization or

similar entity" within the meaning of California Civil Code Section 4110, unless the collection of such amounts by such entity would not constitute a violation of Civil Code Sections 4575 and 4580 or other applicable law.

9. SERIAL IMPOSITION AND RECORDATION. No Transfer Fees shall be payable with respect to any transfer of a portion of the Property that has not yet been subdivided to enable the development of the Condominiums on the Property or with respect to the recordation of the subdivision map creating the Condominiums.

10. NOTICES. All notices required or allowed hereunder shall be in writing. Notices to Declarant or notices or payment of the Transfer Fees to Port may be given at the following addresses:

Port:	San Francisco Port Commission Pier 1 San Francisco, California 94111 Attention: Director of Real Estate & Development (Reference: Pier 70) Telephone: (415) 274-0400
With a copy to:	San Francisco Port Commission Pier 1 San Francisco, California 94111 Attention: General Counsel (Reference: Pier 70) Telephone: (415) 274-0400
Declarant:	[Insert contact info]
With a copy to:	

All notices required or allowed to an Owner shall be in writing and shall be sent to the address of the Unit owned by the Owner.

Notices may be given by personal delivery, or sent by reputable overnight delivery service with charges prepaid for next-business-day delivery, or by first class certified U.S. Mail with postage prepaid and return receipt requested. Notices are effective on the earlier of the date received, one business day after transmittal by overnight delivery service, or the third day after the postmark date, as applicable. Each Owner who transfers a Unit shall give notice to the Port of the name and mailing address of the transferee.

11. MISCELLANEOUS.

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

11.2 Attorneys' Fees. In any action or proceeding to seek a declaration of rights hereunder, to enforce the terms hereof or to recover damages or other relief for alleged breach, then the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs, including experts' fees, costs incurred in connection with (a) post judgment motions, (b) appeals, (c) contempt proceedings, (d) garnishments and levies, (e) debtor and third-party examinations, (f) discovery, and (g) bankruptcy litigation. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing, perfecting and executing such judgment. A party

shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment.

11.3 ***Time***. Time is of the essence of each and every provision hereof.

11.4 ***Disclaimers***. Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

11.5 ***Construction***. Whenever the context of this Covenant requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Descriptive section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

11.6 ***Waiver***. Any waiver with respect to any provision of this Covenant shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this Covenant by a party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Covenant. No waiver will be interpreted as a continuing waiver.

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

11.8 ***Severability***. Invalidation of any portion or provision of this Covenant by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect to the maximum extent permitted by law.

11.9 ***No Dedication***. The provisions of this Covenant are for the exclusive benefit of Declarant, Port and their respective successors and assigns, and, except for rights expressly conferred on Port hereunder, shall not be deemed to confer any rights upon any other person. Without limiting the generality of the foregoing, this Covenant is not intended to create any rights in the public.

[Remainder of this Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties have executed this Covenant as of the day and year first above written.

Declarant:	[BUYER'S ENTITY NAME AND STATE OF FORMATION]
Port:	**CITY AND COUNTY OF SAN FRANCISCO,** a municipal corporation, acting by the **SAN FRANCISCO PORT COMMISSION** By: ______________________________ Name: ____________________________ Title: _____________________________
Approved by **CITY AND COUNTY OF SAN FRANCISCO,** Department of Real Estate ______________________________	

Transfer Fee Covenant
Exhibit A

Property Description

[To be attached]

Transfer Fee Covenant

Exhibit B

Notice of Transfer Fee Covenant

NOTICE OF UNIT TRANSFER – PIER 70

1. **Unit Being Transferred:________________[address]__________, Unit #______**
2. **Name of Current Owner (transferor):____________________________________**
3. **Name of Purchaser (transferee):____**
4. **Purchase Price:_______________________________**
5. **Proposed Date of Closing (date deed transferring title is recorded):___________**
6. **Name, Address, and Phone Number of Escrow Agent (usually the title company providing title insurance to the purchaser):___________________________________**
7. **Name of Escrow Officer: ____**
8. **Estimated Amount of Transfer Fee Due:___________________________________**

Calculate Estimated Amount of Transfer Fee as follows:

Purchase Price X 0.015 = Amount of Transfer Fee

EXHIBIT C-2A

FORM OF NOTICE OF TRANSFER FEE COVENANT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN: [NOTE: Civ. Code 1098.5(b) requires legal description and assessor's parcel number for the affected real property]

PAYMENT OF TRANSFER FEE REQUIRED

This Notice of Payment of Transfer Fee Required (this "**Notice**") is made as of this ___ day of _______, 20___ , and is being recorded concurrently with that certain Declaration Imposing Transfer Fee Covenant and Lien (the "**Transfer Fee Covenant**") by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**"), and [BUYER'S ENTITY NAME AND INFORMATION] ("**Declarant**"). This Notice and the Transfer Fee Covenant relate to the development located within the City and County of San Francisco, State of California, as is more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Property**").

This Notice is being recorded pursuant to and in compliance with California Civil Code §1098.5(b). Notice is hereby given that the Transfer Fee Covenant imposes an obligation to pay Transfer Fees on certain qualifying Transfers of Units. All capitalized terms shall have the meaning set forth in Transfer Fee Covenant unless otherwise defined herein.

Name of Current Owner of the Property and APN's

(A) As of the date of recordation of this Notice, the current owner of the Property is Declarant. The assessor's parcel numbers within the Property are [__________].

The Percentage of the Sales Price Constituting the Cost of the Transfer Fee

(B) The Transfer Fee obligation is calculated as a percentage of the sales price given in exchange for a Unit. The Transfer Fee is equal to one and one half percent (1½%) of the Purchase Price of the Unit (the "Transfer Fee") in perpetuity; provided, however, that no Transfer Fee shall be due and payable with respect to the initial Transfer of any Unit.

Actual Dollar-Cost Examples of the Transfer Fee Calculations

(C) As an actual dollar cost example of the Transfer Fee percentages shown in (B) above, the following calculations show what the Transfer Fee would be for different Purchase Prices of Units within the Property:

Purchase Price	Transfer Fee	Transfer Fee Due Port
$250,000	X 0.015	$3,750
$500,000	X 0.015	$7,500
$750,000	X 0.015	$11.250

Expiration of Transfer Fee

(D) The Transfer Fee described in this Notice will not expire and lasts in perpetuity, unless amended or terminated in accordance with the Transfer Fee Covenant.

Purpose of Transfer Fee: Use of Funds

(E) The Transfer Fees shall be deposited into the Port's Harbor Fund and will be used solely for public trust purposes benefitting lands under Port jurisdiction.

Entity Receiving Transfer Fees and Contact Information

(F) The Transfer Fees shall be paid to Port with the following contact information:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Reference: Pier 70 28-Acre Site Transfer Fee
Attn: Deputy Director, Real Estate and Development

Certain Prohibition on the Federal Housing Finance Agency and the Federal Housing Administration Financing Properties Encumbered by Private Transfer Fee

The Federal Housing Finance Agency and the Federal Housing Administration are prohibited from dealing in mortgages on properties encumbered by private transfer fee covenants that do not provide a "direct benefit" to the real property encumbered by the covenant. As a result, if you purchase such a property, you or individuals you want to sell the property to may have difficulty obtaining financing.

This Notice is intended as a summary of the provisions of the Transfer Fee Covenant in compliance with California Civil Code §1098.5 and does not modify or amend the Transfer Fee Covenant or any of its provisions. In the case of any inconsistency or inaccuracy between the Transfer Fee Covenant and this Notice, the Transfer Fee Covenant controls. Please review the Transfer Fee Covenant for more details about the Transfer Fee.

The undersigned have made this Notice on the date set forth above and has caused this Notice to be recorded in the Official Records of the City and County of San Francisco, State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the Declarant has executed this Covenant as of the day and year first above written.

DECLARANT:

[insert Declarant name], a ____________

By: ______________________________
Name: ______________________________
Title: ______________________________

CONSENT OF PORT

The Port hereby agrees and consents to be the recipient of the Transfer Fee funds on the date first set forth above as required by California Civil Code § 1098.5(b)(2)(G).

PORT:

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

By: ______________________________
Name: ______________________________
Title: ______________________________

Exhibit "A"

The Property

[Legal Description to be inserted]

VDDA EXHIBIT C-3
SCHEDULE OF PERFORMANCE

[To be prepared and attached prior to execution]

VDDA EXHIBIT D
NOTICES OF SPECIAL TAX

[Executed copy to be attached prior to execution]

VDDA EXHIBIT E

PIER 1
SAN FRANCISCO, CA 94111

LICENSE TO USE PROPERTY

LICENSE NO. ____

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

[VERTICAL DEVELOPER],

[PORTIONS OF PIER 70]

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

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EXHIBITS AND SCHEDULES

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BASIC LICENSE INFORMATION

License Date:	
License Number:	
Port:	**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Port's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Licensee:	[Vertical Developer]
Licensee's Main Contact Person and Mailing Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Billing Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Emergency Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Insurance Contact and Address (not broker):	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Parking Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:

Contact Information for Licensee's Agent for Service of Process:	
License Area:	The License Area is located in the Pier 70 area of the City and County of San Francisco, as more particularly shown on *Exhibit A* attached hereto and made a part hereof, together.
Length of Term:	[__________]
Commencement Date:	[____________________]
Expiration Date:	
License Fee:	This License is entered into in furtherance of Licensee's obligations under the Vertical Disposition and Development Agreement ("**VDDA**") by and between Port and Licensee, dated ________, 20[xx]. In consideration thereof, there is no License Fee due hereunder.
Environmental Security:	Environmental Oversight Deposit of $10,000. **[Note: Additional security dependent on type of activity and location.]**
Permitted Activity:	The License Area shall be used solely for the permitted activities described in ***Exhibit B*** attached hereto, as may be updated from time to time and appended hereto, for the construction of Deferred Infrastructure outside of the Property .
Additional Prohibited Uses:	In addition to, and without limiting, the Prohibited Uses specified in Section 7 below, Licensee shall be prohibited from using the License Area for any of the following activities: (a) (b) Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.
Invasive Work:	Notwithstanding the foregoing, Licensee will provide Port prior written notice before it may enter the License Area to perform any Permitted Activity that involves invasive testing, excavation or construction ("**Invasive Work**"). Each written notice will identify the scope of Invasive Work, the anticipated date for commencement and the anticipated duration for the Invasive Work.

Cure Period where applicable:	-Five (5) days after notice for failure to pay any Fees and/or all other charges hereunder. -One (1) day after notice if the Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion. -Five (5) business days after notice if Licensee defaults in its obligation to maintain insurance under the provisions of Article 21 set forth in Schedule 1 (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials). -For any other non-monetary default not described above, thirty (30) days, or, if such cure cannot reasonably be completed within such 30-day period, if Licensee does not within such 30-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.
Maintenance and Repair:	See Section 9.3
Utilities and Services:	See Section 9.1 and 9.2
Location of Asbestos:	[If applicable, see *Schedule 3* attached hereto].
Workforce Development Plan and Prevailing Wages:	Licensee will comply with the Workforce Development Plan attached to the VDDA and Section 17.2 (Prevailing Wages) of the VDDA in connection with Licensee's performance in the License Area of the Permitted Activities as if such plan and section were incorporated into this License except that any reference in such plan or section, as applicable, to "Developer" or "Tenant" will mean Licensee and "Premises" or "Facility" will mean the License Area and "Project", or similar words will mean the Vertical Project.
Prepared By:	[____________________]

License To Use Property

1. Basic License Information.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the **City and County of San Francisco**, a municipal corporation ("**City**"), operating by and through the **San Francisco Port Commission** ("**Port**"), as licensor, and the party identified in the Basic License Information as licensee ("**Licensee**"). The Basic License Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this "**License.**" In the event of any conflict or inconsistency between the Basic License Information and the License provisions, the Basic License Information will control.

2. Grant of License.

2.1. *License*. In consideration of the stated conditions and agreements, Port hereby grants permission to Licensee to carry on the Permitted Activity within the License Area described in the Basic License Information and ***Exhibit A*** attached hereto.

2.2. *Encroachment.*

(a) If Licensee or its Agents or Invitees uses or occupies space outside the License Area without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Licensee shall immediately vacate such Encroachment Area and pay as an additional charge for each day Licensee used, occupied, uses or occupies such Encroachment Area, an amount equal to the square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Encroachment Area, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Licensee uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Licensee or its Agents or Invitees, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this License (including Licensee's obligation to Indemnify Port as set forth in this Section), at law or in equity.

(b) In addition, Licensee shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Licensee has failed to vacate the Encroachment Area, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Vacate, if applicable, delivered by Port to Licensee following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area, issuance of each Notice to Vacate and survey of the Encroachment Area. Licensee's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of Section 14 below (Indemnity and Exculpation) shall also apply to Licensee's and its Agents' and Invitees' use and occupancy of the Encroachment Area as if the License Area originally included the Encroachment Area, and Licensee shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Licensee in surrendering the

Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 2.2 and the reasonableness of the amount of the charges described in this Section 2.2.

3. TERM; REVOCABILITY.

This License is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the Commencement Date and expires on the Expiration Date specified in the Basic License Information ("**Term**") unless sooner terminated pursuant to the terms of this License.

The Parties acknowledge that Licensee is undertaking the Permitted Activities hereunder to fulfill its obligations under the VDDA. Therefore, Port will not revoke or terminate this License prior to the Expiration Date unless Licensee causes an uncured event of default hereunder or under the VDDA that would otherwise permit a termination thereof.

Initials: ________
Licensee

4. FEES.

4.1. ***License Fee.*** As described in the Basic License Information, no License Fee is due hereunder. Any other sums payable by Licensee to Port hereunder shall be paid in cash or by good check to the Port and delivered to Port's address specified in the Basic License Information, or such other place as Port may designate in writing. All other sums payable by Licensee, including without limitation, any additional charges and late charges, are referred to collectively as "Fees."

4.2. ***Additional Charges.*** Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 21.3 (Tenant's Environmental Condition Notice Requirements) of the Master Lease as shown on ***Schedule 1*** attached hereto (Provisions for Indemnity, Insurance and Hazardous Materials), or Sections 15.1 (SWPPP) or 21.1(d) (CMD Form) of this License, or to provide evidence of the required insurance coverage described in Section 11 below (Insurance), then upon written notice from Port of such failure, Licensee shall pay an additional charge in the amount of Three Hundred Dollars ($300). In the event Licensee fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Licensee additional written notice requesting such document, then Licensee shall pay to Port an additional charge in the amount of Three Hundred Fifty Dollars ($350) for each additional written notice Port delivers to Licensee requesting such document. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

4.3. ***Late Charges/Habitual Late Payer***. Licensee acknowledges that late payment by Licensee to Port of Fees or other sums due under this License will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Licensee fails to pay Fees on the date due, such failure shall be subject to a Late Charge at Port's discretion. Licensee shall also pay any costs including attorneys' fees incurred by Port by reason of Licensee's failure to timely pay Fees. Additionally, in the event Licensee is notified by Port that Licensee is considered to be a Habitual Late Payer, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Licensee's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Licensee.

4.4. ***Default Interest***. Any Fees, if not paid within five (5) days following the due date and any other payment due under this License not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Licensee nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Licensee. Licensee shall also pay any costs, including attorneys' fees incurred by Port by reason of Licensee's failure to pay Fees or other amounts when due under this License.

4.5. ***Returned Checks***. If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5. ENVIRONMENTAL OVERSIGHT DEPOSIT.

(a) Before the Commencement Date, Licensee must deliver to Port the Environmental Oversight Deposit in cash, in the sum specified in the Summary of Basic Information, as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Licensee's operations under this License; provided, however, that the Environmental Oversight Deposit will not be deemed an advance of any payment due to Port under this License, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

(b) Port may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("Environmental Notice") to Licensee and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Licensee has not begun to cure or comply with the Environmental Notice or is not working actively to cure the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, attorneys' fees, and collection and laboratory analysis of environmental samples.

(c) If an Environmental Notice is delivered to Licensee, and Licensee has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port may apply a maximum of $500 from the Environmental Oversight Deposit for each Environmental Notice delivered to Licensee to reimburse Port for its administrative costs.

(d) Licensee must pay to Port immediately upon demand a sum equal to any portion of the Environmental Oversight Deposit Port expends or applies.

(e) Provided that no Environmental Notices are then outstanding, Port will return the balance of the Environmental Oversight Deposit, if any, to Licensee within a reasonable time after the expiration or earlier termination of this License. Port's obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.

6. PERMITTED ACTIVITY; SUITABILITY OF LICENSE AREA.

The License Area shall be used and occupied only for the Permitted Activity specified in the Basic License Information and for no other purpose. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by Port. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By entering onto the License Area under this License, Licensee acknowledges it shall be deemed to have inspected the License Area and accepted the License Area in its "**As Is**" condition and as being suitable for the conduct of Licensee's activity thereon.

7. PROHIBITED USES.

Licensee shall use the License Area solely for Permitted Activities and for no other purpose. Any other use in, on or around the License Area or surrounding or adjacent Port property shall be strictly prohibited, including, but not limited to, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) (each, a "**Prohibited Use**").

In the event Port determines after inspection of the License Area that a Prohibited Use or Prohibited Uses are occurring in, on or around the License Area, then Licensee shall immediately cease the Prohibited Use(s) and shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of written notice to Licensee to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) of the License Area that Licensee has not ceased the Prohibited Use, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Cease Prohibited Use delivered to Licensee. The parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area and Licensee's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 7 and the reasonableness of the amount of the charges described in this Section 7.

8. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.

8.1. ***Compliance with Laws***. Licensee, at Licensee's sole cost and expense, promptly shall comply with all Laws relating to or affecting Licensee's use or occupancy of the License Area.

8.2. ***Regulatory Approval***. Licensee understands that Licensee's activity on the License Area may require Regulatory Approvals from Regulatory Agencies. Licensee shall be solely responsible for obtaining any such Regulatory Approvals, and Licensee shall not seek any Regulatory Approval without first obtaining the prior written approval of Port, not to be unreasonably withheld, subject to this Section 8.2. Port will cooperate reasonably with Licensee in Licensee's efforts to obtain required Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with applicable Laws and to further terms and conditions of this License, including without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (i) encumber, restrict or adversely change the use of any Port property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions; or (ii) subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees to which Port may be subject). All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by the Port or would create obligations on the part of the Port (whether on or off of the License Area) to perform or observe, unless in each instance the Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for the fines and penalties. To the fullest extent permitted by Law, Licensee agrees to Indemnify City, Port and their Agents from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

8.3. ***Port Acting As Owner of Property***. By signing this License, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, [if Port is licensor][(ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a Regulatory Agency of City with certain police powers], and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activity on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency [if Port is licensor][and Port's status as an agency of City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.]

8.4. ***Accessibility***. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related

accessibility requirements. The law does not require landlords to have the inspections performed. Licensee is hereby advised that the License Area has not been inspected by a CASp and, except to the extent expressly set forth in this License, Port shall have no liability or responsibility to make any repairs or modifications to the License Area in order to comply with accessibility standards. The following disclosure is required by law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Licensee understands and agrees that Licensee may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws. As further set forth in this Section, Licensee further understands and agrees that it is Licensee's obligation, at no cost to Port, to cause Licensee's use of the License Area to be conducted in compliance with the all federal or state disability access Laws.

9. UTILITIES, SERVICES, MAINTENANCE AND REPAIR.

9.1. ***Utilities***. Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the License Area except that the foregoing will not diminish any Port obligation under the VDDA, if any, to work cooperatively with Licensee with respect to any Licensee right to access utilities. Except as may be otherwise provided in the Basic License Information, Licensee shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the License Area or to be used by Licensee. Except as otherwise set forth in the Development Agreement, Licensee will procure all electricity for the License Area from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. Except as otherwise set forth in the Development Agreement, if the SF Public Utilities Commission determines that it cannot feasibly provide service to Licensee, Licensee may seek another provider.

9.2. ***Services***. Port has no responsibility or liability of any kind with respect to the provision of any services to Licensee or on, in, or to the License Area. Licensee shall make arrangements and shall pay all charges for all services to be furnished on, in or to the License Area or to be used by Licensee, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

9.3. ***Maintenance and Repairs***. Licensee shall not be obligated to make any repairs, replacement or renewals of any kind, nature of description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon (collectively, "**Repairs**"), except to the extent that Licensee, or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. In the event that Licensee or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property that is not otherwise consistent with the Vertical Project, Licensee shall be responsible and Port may, at its sole and absolute discretion, elect to repair the same itself or require Licensee to repair the same, all at Licensee's sole cost and expense. Upon receipt of any invoice from Port for costs incurred by

Port related to any repair performed by Port in accordance with this Section, Licensee shall immediately reimburse Port therefor. This provision shall survive the expiration or earlier termination of this License.

10. TAXES AND ASSESSMENTS.

Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the Licensee's possession, use, or occupancy, as distinguished from the ownership, of the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee shall report any assignment or other transfer of any interest in this License or any renewal or extension hereof to the County Assessor within 60 days after such assignment transaction or renewal or extension. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

11. INSURANCE.

Licensee shall maintain throughout the Term, at Licensee's expense, insurance in accordance with the insurance provisions set forth in Article 20 as shown on Schedule 1 (Provisions for Indemnity, Insurance and Hazardous Materials).

12. NOTICES.

Except as otherwise expressly provided in this License or by Law, all notices (including notice of consent or non-consent) required or permitted by this License or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic License Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by Licensee in Licensee's written response to Port's written request for such information.

All notices under this License shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

13. DEFAULT BY LICENSEE; REMEDIES.

13.1. ***Event of Default***. The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee; or

(b) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee.

(c) An assignment, or attempted assignment, of this License by Licensee, except in connection with an assignment or other Transfer of Licensee's rights permitted or approved by Port under the VDDA;

(d) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License.

13.2. ***Port's Remedies***. Upon default by Licensee, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee's obligations.

14. INDEMNITY AND EXCULPATION.

The provisions of Article 19 (Indemnification of Port) ***Schedule 1*** (Provisions for Indemnity, Insurance and Hazardous Materials) will govern Tenant's Indemnification obligations and Tenant's waiver of various claims against the Indemnified Parties, except that "Losses" shall be payable by Licensee to Port directly and immediately upon Port's request without regard to the concept of "Additional Rent."

15. HAZARDOUS MATERIALS.

The provisions of Article 21 (Hazardous Materials) set forth in ***Schedule 3*** (Provisions for Indemnity, Insurance and Hazardous Materials) will govern.

15.1. ***Storm Water Pollution Prevention.***

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. If applicable to the Permitted Activities hereunder, Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning operations in the License Area.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

15.2. ***Presence of Hazardous Materials***. California Law requires landlords to disclose to Licensees the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials (as herein defined) may be present on or near the License Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: Hazardous Materials described in the reports listed in ***Schedule 2***

attached hereto, copies of which have been delivered to or made available to Licensee. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Licensee must disclose the information contained in this Section to any sublicensee, licensee, transferee, or assignee of Licensee's interest in this License. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

16. PORT'S ENTRY ON LICENSE AREA.

16.1. ***Entry for Inspection***. Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties.

16.2. ***Emergency Entry***. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License.

16.3. *No Liability*. Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area, or entry by the public (as Licensee has a non-exclusive right to use the License Area) onto the License Area.

17. IMPROVEMENTS AND ALTERATIONS.

Except as specified in the Basic License Information to the extent required to implement Licensee's obligations to construct the Deferred Infrastructure, Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area (including the installation of any trade fixtures affixed to the License Area or whose removal will cause injury to the License Area).

18. SURRENDER.

Upon the expiration or earlier termination of this License, Licensee shall surrender to Port the License Area and any pre-existing alterations and improvements in the same or better condition as it was in at the Commencement Date, subject to ordinary wear and tear). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by Licensee properly performing all of its obligations under this License. The License Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this License and any other encumbrances created by Port. On or before the expiration or earlier termination hereof, Licensee shall remove all of its personal property and, unless Port directs otherwise, any alterations and improvements that Licensee has installed with Port's consent, and perform all restoration made necessary by the removal of Licensee's personal property.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property and any alterations and improvements that Licensee has installed with or without Port's consent that Licensee does not remove from the License Area prior to the expiration or earlier termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing,

removing and disposing of abandoned property and repairing any damage to the License Area resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee. Licensee hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

19. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.

19.1. ***Litigation Expenses***. The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this License, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

19.2. ***City Attorney***. For purposes of this License, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

19.3. ***Limitation on Damages***. Licensee agrees that Licensee will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this License, or for any Claim based upon this License, except to the extent of the fair market value of Port's fee interest in the License Area (as encumbered by this License). Licensee's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Licensee expressly waives all such liability.

19.4. ***Non-Liability of City Officials, Employees and Agents***. No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

19.5. ***Limitation on Port's Liability Upon Transfer***. In the event of any transfer of Port's interest in and to the License Area, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this License thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or

obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

20. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Fees or otherwise relieve Licensee from any of its obligations under this License.

21. CITY AND PORT REQUIREMENTS. **[NOTE: PROVISIONS OF THIS SECTION 21 WILL BE UPDATED TO INCLUDE CITY PROVISIONS REQUIRED AS OF LICENSE EXECUTION]**

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this License relating to any such code provision shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance. Notwithstanding the foregoing, to the extent that any of the City and Port requirements set forth in this Section 21 have been modified or waived under the DDA or Development Agreement as applied to the Vertical Project, then the applicable provisions of the DDA or Development Agreement will prevail. Without limiting the foregoing, the Workforce Development Plan attached to the VDDA will govern Licensee's obligations hereunder with respect to any requirements of the Administrative Code with respect to First Source Hiring (Administrative Code Chapter 83) and Local Business Enterprises (Administrative Code Chapter 14B) that would otherwise be applicable hereto.

21.1. ***Nondiscrimination.***

(a) Covenant Not to Discriminate. In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapters 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapters 12B or 12C of the Administrative Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) Sublicenses and Other Contracts. Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all Sublicensees and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family

medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Licensee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of $50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

21.2. ***Resource-Efficient Facilities and Green Building Requirements***. Licensee agrees to comply with all applicable provisions of Environment Code Chapter 7 relating to resource-efficiency and green building design requirements.

21.3. ***Prohibition of Tobacco Sales and Advertising***. Licensee acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

21.4. ***Prohibition of Alcoholic Beverages Advertising***. Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

21.5. ***Graffiti Removal***. Licensee agrees to remove all graffiti from the License Area, within forty-eight (48) hours of the earlier of Licensee's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "**Graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this License or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

21.6. ***Restrictions on the Use of Pesticides.*** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee's staff or contractors. If Licensee or Licensee's contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

21.7. ***MacBride Principles Northern Ireland.*** Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

21.8. ***Tropical Hardwood and Virgin Redwood Ban.*** Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

21.9. ***Preservative-Treated Wood Containing Arsenic.*** Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing

preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

21.10. ***Notification of Limitations on Contributions***. If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.10 shall apply. Through its execution of this License, Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Licensee further acknowledges that, if applicable, the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that if this Section 21.10 applies, Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

21.11. ***Sunshine Ordinance***. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

21.12. ***Conflicts of Interest***. Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

21.13. ***Drug-Free Workplace***. Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

21.14. ***Public Transit Information***. Licensee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Licensee employed on the License Area, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the License Area and encouraging use of such facilities, all at Licensee's sole expense.

21.15. ***Food Service and Packaging Waste Reduction Ordinance***. Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging

Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Licensee agrees that the sum of one hundred dollars ($100.00) liquidated damages for the first breach, two hundred dollars ($200.00) liquidated damages for the second breach in the same year, and five hundred dollars ($500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

21.16. ***San Francisco Bottled Water Ordinance.*** Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the License Area with attendance of more than 100 people.

22. WAIVER OF RELOCATION.

Licensee hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, to the extent allowed under applicable Law.

23. SIGNS.

Licensee shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices on the License Area without Port's prior written consent. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Licensee shall obtain all Regulatory Approvals required by such Laws. Licensee, at its sole cost and expense, shall remove all signs placed by it on the License Area at the expiration or earlier termination of this License.

24. MISCELLANEOUS PROVISIONS.

24.1. ***California Law.*** This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and Licensee hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

24.2. ***Entire Agreement.*** This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License.

24.3. ***Amendments.*** No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

24.4. ***Severability.*** If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by law.

24.5. *Interpretation of License.*

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this License.

(g) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

24.6. *Successors.* The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

24.7. ***Real Estate Broker's Fees***. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

24.8. ***Counterparts***. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

24.9. ***Authority***. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee has and is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

24.10. ***No Implied Waiver***. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

24.11. ***Time is of Essence***. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

24.12. ***Cumulative Remedies***. All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

24.13. ***Survival of Indemnities***. Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

24.14. ***Relationship of the Parties***. Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

24.15. ***No Recording***. Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

24.16. ***Additional Written Agreement Required***. Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of

Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

25. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"Agents" when used with reference to either party to this License or any other person, means the officers, directors, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"Basic License Information" refers to the summary of basic license information attached to this License.

"CMD" means the Contract Monitoring Division of the City's General Services Agency.

"Cal-OSHA" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"City" is defined in Section 1.

"Claim" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"Commencement Date" means the date specified in the Basic License Information.

"Cure Period" means the period of time described in the Basic License Information.

"DDA" means that certain Disposition and Development Agreement by and between Port and FC Pier 70, LLC, dated as of _______, 2018.

"Development Agreement" means that certain Development Agreement by and between the City and FC Pier 70, LLC, dated

"Encroachment Area" is defined in Section 2.2..

"Encroachment Area Charge" is defined in Section 2.2.

"Environmental Laws" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Environmental Regulatory Action" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Environmental Regulatory Agency" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Environmental Regulatory Approval" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Exacerbate" or **"Exacerbating"** is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Expiration Date" means the date specified in the Basic License Information.

"Fees" means all sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 4.

"Handle" or **"Handling"** is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Hazardous Material" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Hazardous Material Claim" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material Condition**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Indemnified Parties**" the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, all other Person acting on their behalf, and each of them.

"**Indemnify**" means to indemnify, protect, defend, and hold harmless forever. "**Indemnification**" and "**Indemnity**" have correlating meanings.

"**Interest Rate**" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"**Investigate**" or "**Investigation**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Invitees**" means Licensee's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, Sublicensees, and any other person whose rights arise through them.

"**Late Charge**" means a fee equivalent to fifty dollars ($50.00).

"**Law**" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area, including Regulatory Approvals issued to Port which require Licensee's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the parties.

"**License**" is defined in Section 1.

"**License Area**" means the area described in the Basic License Information.

"**License Fee**" means the monthly usage charge for the License Area described in the Basic License Information.

"**New Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Notice to Cease Prohibited Use**" is defined in Section 7.

"**Notice to Vacate**" is defined in Section 2.2.

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**Permitted Activity**" is means the activity described in the Basic License Information.

"**Pier 70 Risk Management Plan**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Pre-Existing Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Vertical Project**" means that certain development project undertaken by Licensee as more particularly described in the VDDA.

"**Port**" is defined in Section 1.

"**prevailing party**" is defined in Section 19.1.

"**Prohibited Use**" is defined in Section 7.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory

capacity), Port (in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"Regulatory Approval" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"Release" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"Remediate" or **"Remediation"** is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"State Lands Indemnified Parties" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"SWPPP" is defined in Section 15.1.

"Term" is defined in Section 3.

"VDDA" means the Vertical Disposition and Development Agreement dated as of ___________, 20[xx] between the City and County of San Francisco operating by and through the San Francisco Port Commission and [Vertical Developer].

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IN WITNESS WHEREOF, Port and Licensee have executed this License as of the last date set forth below

Licensee: **[INSERT VERTICAL DEVELOPER]**, a [________________]

By: ______________________
Name: ______________________
Title: ______________________

Date signed: ______________________

By: ______________________
Name: ______________________
Title: ______________________

Date signed: ______________________

Port: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: ______________________
Michael J. Martin,
Deputy Director, Real Estate and Development

Date signed: ______________________

Approved as to Form: DENNIS J. HERRERA, City Attorney

By: ______________________
Deputy City Attorney

License Prepared by [INSERT NAME] , Commercial Property Manager____________(initial)

EXHIBIT B

PERMITTED ACTIVITY
(To be attached.)

SCHEDULE 1

PROVISIONS FOR INDEMNITY, INSURANCE AND HAZARDOUS MATERIALS

19. INDEMNIFICATION OF PORT.

19.1. General Indemnification of the Indemnified Parties. Subject to Section 19.4, (Exclusions from Indemnifications, Waivers and Releases). Licensee agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the License Area or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the License Area, or any acts or omissions of Licensee, its Agents, sub-licensees, or Invitees, or their respective Agents and Invitees;

(b) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the License Area or any part thereof by Licensee, its Agents, sub-licensees, or Invitees, or their respective Agents and Invitees;

(c) any latent, design, construction or structural defect relating to the Vertical Project, any other Subsequent Construction, or any other matters relating to the condition of the License Area caused directly or indirectly by Licensee or any of its Agents, Invitees, or sub-licensees;

(d) any failure on the part of Licensee or its Agents, Invitees, or sub-licensees, as applicable, to perform or comply with any of the terms, covenants, or conditions of this Lease or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the License Area or any part thereof by Licensee or any of its Agents or sub-licensees;

(f) any acts, omissions, or negligence of Licensee, its Agents, Invitees, or sub-licensees; and

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the License Area to the extent it relates to such use or occupancy.

<u>19.2. Hazardous Materials Indemnification.</u>

(a) In addition to its obligations under Section 19.1 (General Indemnification of the Indemnified Parties) and subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), Licensee, for itself and on behalf of its sub-licensees, Agents, or any of their respective Agents (individually "Related Third Party" and collectively "Related Third Parties") or their respective Invitees agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition existing or occurring during the Term;

(ii) any Handling or Release of Hazardous Materials in, on, under, around or about the License Area during the Term;

(iii) any Exacerbation of any Hazardous Material Condition in, on, under, around or about the License Area during the Term; or

(iv) failure by Licensee or any Related Third Party to comply with the Pier 70 Risk Management Plan, or failure by their respective Invitees to comply with the Pier 70 Risk Management Plan within the License Area during the Term; or

(v) claims by Licensee or any Related Third Party for exposure during the Term from and after the Commencement Date to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(b) Losses under Section 19.2(a) includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the License Area or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the License Area; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this section, Licensee must reimburse Port for Port's costs, plus interest at the Interest Rate from the date of demand until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(c) Licensee understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this Section 19.2, subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), arises upon the earlier to occur of:

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the License Area;

(ii) the Handling or Release of Hazardous Materials in, on, under, around or about the License Area;

(iii) the Exacerbation of any Hazardous Material Condition; or

(iv) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

19.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in Section 19.4 (Exclusions from Indemnifications; Waivers and Releases), Licensee's Indemnification obligations under this Lease are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Licensee specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Licensee, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Licensee and continues at all times thereafter until finally resolved. Licensee's Indemnification obligations under this Lease are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Licensee may have to Port in this Lease, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Licensee constitute Additional Rent owing from Licensee to Port hereunder and are due and payable from time to time immediately upon Port's request, as incurred.

19.4. Exclusions from Indemnifications; Waivers and Releases.

(a) Nothing in this Article 19 (Indemnification of Port) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in Sections 19.1 (General Indemnification of Indemnified Parties), 19.2 (Hazardous Materials

Indemnification),), or the defense obligations set forth in Sections 19.3 (Scope of Indemnities) and 19.6 (Defense) extend to Losses:

(i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, or

(ii) from third parties' claims for exposure to Hazardous Materials in, on or under any portion of the License Area prior to the earlier of the (1) commencement of the License, if any, executed under the DDA for access to such portion of the License Area prior to the effective date of this Lease where Licensee has exclusive control of the License Area; or (2) effective date of this Lease with respect to such portion of the License Area; or

(iii) without limiting Licensee's Indemnification obligations under Sections 19.2(a)(ii), 19.2(a)(iv), or 19.2(a)(v), and to the extent the applicable Loss was not caused by the failure of Licensee or a Related Third Party to comply with the Pier 70 Risk Management Plan, or the failure of their respective Invitees to comply with the Pier 70 Risk Management Plan while on the License Area, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Horizontal Improvement Parcels after the Acceptance Date for such parcel (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Horizontal Improvement Parcel and is not also present in, on or around the License Area); provided, however, the foregoing limitation on Licensee's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Licensee or any of its Related Third Parties.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under Section 19.2 (Hazardous Materials Indemnification) is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Licensee in asserting a claim or claims under such insurance policy but without waiving any of its rights under Section 19.2 (Hazardous Materials Indemnification). Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Licensee, the Indemnification from Licensee under Section 19.2 (Hazardous Materials Indemnification) will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Licensee pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Licensee.

19.5. Survival. Licensee's Indemnification obligations under this Lease and the provisions of this Article 19 (Indemnification of Port) survive the expiration or earlier termination of this Lease (or, the partial termination of this Lease with respect to any portion of the License Area released in accordance with Section 1.1(b) Adjustment of License Area for Development)).

19.6. Defense. Licensee will, at its option but subject to reasonable approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Licensee's choice; provided, that in all cases Port will be entitled to participate in such defense, compromise or settlement at its own expense. If Licensee fails, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port will have the right promptly to use the City Attorney or hire outside counsel, at Licensee's sole cost, to carry out such defense, compromise or settlement which expense is due and payable to the Port within fifteen (15) days after receipt by Licensee of a detailed invoice for such expense.

19.7. Waiver. As a material part of the consideration of this Lease, Licensee hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from any Losses, including (i) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (ii) goodwill, (iii) business opportunities, (iv) any act or omission of persons occupying adjoining premises, (v) theft, (vi) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination, (vii) Building defects, (viii) inability to use all or any portion of the License Area due to sea level rise or flooding or seismic events, (ix) arising from the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard, and (x) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the License Area or the 28-Acre Site, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

Licensee expressly acknowledges and agrees that the amount payable by Licensee hereunder does not take into account any potential liability of the Indemnified Parties or State Lands Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties or State Lands Indemnified Parties, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties or State Lands Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue, or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties or State Lands Indemnified Parties arising out of this Lease or the uses authorized hereunder, including, any interference with uses conducted by Licensee pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Licensee understands and expressly accepts and assumes the risk that any facts concerning the claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the waivers and releases in this Lease will remain effective. Therefore, with respect to the claims released in this Lease, Licensee waives any rights or benefits provided by California Civil Code Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE WAIVERS AND RELEASES MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE WAIVERS AND RELEASES AT THE TIME THIS LEASE WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Licensee's Initials: ____________

Licensee acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Licensee realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

20. INSURANCE.

20.1. Required Insurance Coverage. In addition to the Additional Insurance Requirements to be provided by Licensee, Licensee, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than Twenty Million Dollars ($20,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, liquor liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars ($250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Licensee is conducting any activity on or Subsequent Construction or Improvement to the License Area with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than Five Million Dollars ($5,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Licensee's activity on the License Area or the Permitted Use. If parking is a Permitted Use under this Lease, Licensee must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the License Area on a regular basis, including without limitation Licensee's Agents and Invitees.

(c) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation in statutory amounts, with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury, or illness. In the event Licensee is self-insured for the insurance required pursuant to this Section 20.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. In addition, Licensee will be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively as applicable with Employer's Liability limit not less than Five Million Dollars ($5,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) Personal Property Insurance. Licensee, at its sole cost and expense, shall procure and maintain on all of its personal property and Subsequent Construction, in, on, or about the License Area, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Licensee for the replacement of Licensee's personal property or contractors' equipment as applicable.

(e) Flood Insurance.

(i) During construction of the improvements, for any parcel located within a flood zone on the City's flood maps, flood insurance will be in an amount equal to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates.

(ii) During construction of the improvements, for any parcel not located within a flood zone on the City's flood maps, flood insurance will be in an amount to the extent available at commercially reasonable rates from recognized insurance carriers or through the NFIP equal to the maximum amount of full replacement cost of the improvements with a deductible not to

exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates

(f) Pollution Legal Liability. Licensee, at its sole cost and expense, will procure Pollution Legal Liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim, for a period of not less than five (5) years, and a subsequent policy for an additional five (5) years, for a total term of ten (10) years. Each of the State Lands Indemnified Parties will be named as additional insureds under the terms of any such policy. If Licensee procures any such policy for a period that is longer than ten (10) years, Licensee will ensure that each of THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE STATE LANDS INDEMNIFIED PARTIES are named as additional insureds for such longer period of time.

(g) Construction Activities. Insurance required in connection with construction of Vertical Project is as set forth below:

(i) Contractor Requirements. Licensee must require its contractors and subcontractors to maintain the following coverages:

(1) Commercial general liability insurance with limits of not less than $5 million each occurrence on a policy form that is at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01);

(2) Comprehensive automobile liability insurance with a policy limit of not less than $5 million each occurrence on a policy form that is at least as broad as ISO Form Number CA 0001 covering automobile liability, Code 1 (any auto);

(3) Worker's compensation insurance with statutory limits and employer's liability insurance with limits of not less than $1 million each accident, injury, or illness;

(4) Watercraft liability insurance (if operating watercraft) protection and indemnity insurance with limits not less than $1 million each occurrence, or with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, wreck removal, and damages "In Rem" (the vessel); and

(5) Marine general liability (MGL) (if operating watercraft) with limits not less than $10 million each occurrence and aggregate basis;

(6) Vessel pollution liability insurance (if operating watercraft with engines or fuel usage) with limits not less than $5 million per occurrence and $5 million in the aggregate with a deductible not to exceed $50,000 with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost; insurance should cover liability imposed under laws for any loss, damage, cost, liability or expense arising out of the sudden, accidental, and unintentional discharge, spillage, leakage, emission, or release of any substance of any kind into or on the navigable waters of the United States or the adjoining shorelines.

(7) Contractor's pollution liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim.

(ii) Builder's Risk Requirements. In addition, Licensee or General Contractor must carry "Builder's All Risk" insurance on a "Special Form" ("All Risk") Builder's Risk meeting the following requirements.

(1) The amount of coverage must be equal to the full replacement cost of any existing structures affected by the work and full replacement cost of all new construction, including all materials and equipment intended to become part of the permanent structures. The policy must provide coverage for "soft costs," such as design and engineering fees, code

updates, permits, bonds, insurance, and inspection costs caused by an insured peril. The Builder's Risk insurance may have a deductible clause not to exceed $100,000.

(2) The Builder's Risk policy must identify the City and County of San Francisco and the San Francisco Port Commission as loss payees, subordinate to any lender requirements.

(3) The Builder's Risk policy must include the following coverages: (A) all damages of loss to the work and to appurtenances, to materials and equipment to be incorporated into the project while the same are in transit, stored on or off the site, to construction plant and temporary structures; (B) the costs of debris removal, including demolition as may be made reasonably necessary by covered perils, resulting damage, and any applicable law; and (C) start up and testing and machinery breakdown including electrical arcing.

(iii) Professional Services Requirements. Licensee must require all providers of engineering and geotechnical professional services under contract with Licensee to provide professional liability coverage with limits not less than Five Million Dollars ($5,000,000.00) each claim. With respect to all other professional services provided to Licensee for the Vertical Project, Licensee must require all providers of such professional services under contract with Licensee to provide professional liability coverage with limits not less than Two Million Dollars ($2,000,000.00) each claim. Such insurance will provide coverage during the period when such professional services are performed and for a period of 3 years after issuance of a Certificate of Occupancy for the Vertical Project. This requirement may be met by the use of an extended reporting period. Notwithstanding anything to the contrary, the coverage required in this clause (iii) may be provided with a lower limit for subcontractors that are local business enterprises (LBEs) or are performing work under subcontracts of $100,000 or less only. Licensee shall have the right to request a waiver of the requirements of this clause (iii) by delivering written request to Port, and Port shall respond within a reasonable period of time to any such request; provided, with respect to waiver requests for LBEs and subcontracts only, so long as the waiver request was sent by electronic mail, addressed to one or more line staff responsible for administration of this License stating in the subject line "Immediate Action Required to Avoid Deemed Consent" or words to the same effect, Port will be deemed to have approved such waiver if Port does not respond to the waiver request within five (5) business days.

(h) Other Coverage. Such other insurance or different coverage amounts may change from time to time as required by the City's Risk Manager, if in the reasonable judgement of the City's Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the License Area, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Licensee determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Licensee will provide to Port evidence supporting Licensee's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(i) Substitution. Notwithstanding the foregoing, Licensee shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in this Article 20 (Insurance) with insurance coverage maintained by one or more of Licensee's Agents, Invitees or transferees as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of this Article 20 as determined by Port.

20.2. General Requirements.

(a) Insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance required hereunder, such insurance shall name the Licensee as the first named insured. As to liability insurance Licensee shall ensure that Port and the City of San Francisco are named as additional insureds under all general liability, automobile liability, vessel pollution, pollution, Public Boat Dock liability coverages. Any umbrella and/or excess liability insurance will include an endorsement through a blanket additional endorsement or equivalent naming as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) As to Commercial General Liability and automobile liability insurance, shall provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought;

(iv) Will provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 20.1(a) (General Liability Insurance), 20.1(b) (Automobile Liability Insurance), 20.1(c) (Worker's Compensation),, and 20.1(f) (Pollution Legal Liability);

(v) Will be subject to the reasonable approval of Port, which approval shall not be unreasonably withheld.

(b) Certificates of Insurance; Right of Port to Maintain Insurance. Licensee shall furnish Port certificates with respect to the policies required under this Section within thirty (30) days after the Commencement Date and, with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy, and, within sixty (60) days after Port's request, shall also provide Port with copies of each such policy, or shall otherwise make such policy available to Port for its review. If at any time Licensee fails to maintain the insurance required pursuant to Section 20.1, (Required Insurance Coverage), or fails to deliver certificates as required pursuant to this Section, then, upon thirty (30) business days' written notice to Licensee, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Licensee shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(c) Insurance of Others. To the extent Licensee requires liability insurance policies to be maintained by sub-licensees, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the License Area, Licensee shall require that such policies be endorsed to include the "CITY AND COUNTY OF SAN FRANCISCO AND THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES" as additional insureds under the terms of any such policy. Unless otherwise specified in this agreement, Licensee will ensure that all contractors and sub-contractors performing work on the License Area and all operators and subtenants of any portion of the License Area carry adequate insurance coverages.

(d) Excess Coverage. All requirements may be satisfied by any combination of umbrella and excess liability policies (including blanket policies).

20.3. Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 20.1(d) (Personal Property Insurance) to the extent that such loss is reimbursed by an insurer.

21. HAZARDOUS MATERIALS.

21.1. Compliance with Environmental Laws. Licensee will comply and cause its Agents, Invitees, and all Persons under any Sublease, to comply with all Environmental Laws, operations plans (if any), the Pier 70 Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Vertical Project. Without limiting the generality of the foregoing, Licensee covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials on, under or about the License Area, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable Laws and any reasonable conditions or limitations required by Port, (c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

21.2. Licensee Responsibility. Licensee agrees to protect its Agents and Invitees in its operations on the License Area from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the License Area:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the License Area except as permitted under Section 21.1 (Compliance with Environmental Laws);

(b) Will not cause or permit any Hazardous Material Condition; and

(c) Will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the License Area, and will not engage in or permit any activity at the License Area, or in the operation of any vehicles used in connection with the License Area in violation of any Environmental Laws;

(d) Licensee will be the "Generator" of any waste, including hazardous waste , resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the License Area;

(e) Will comply with all provisions of the Pier 70 Risk Management Plan with respect to the License Area, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually and

(f) Will comply, and will cause all of its sub-licensees that are subject to an operations plan, to comply with the operations plan applicable to Licensee or such sub-licensee, if any.

21.3. Licensee's Environmental Condition Notification Requirements. The following requirements are in addition to the notification requirements specified in the (i) operations plan(s), if any, (ii) the Pier 70 Risk Management Plan, and (iii) Environmental Laws:

(a) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 21.1 (Compliance with Environmental Laws), Handled, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during the Term or Licensee's occupancy of the License Area, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Licensee's notice to Port by oral or other means, Licensee must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Licensee's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Licensee's receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during Licensee's occupancy of the License Area that Licensee or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during the Term or Licensee's occupancy of the License Area;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use in, on, under or about the License Area during the Term or Licensee's occupancy of the License Area; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

(c) Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Port will be entitled to participate in any such meetings at its sole election.

(d) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Licensee's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any plan or procedure required to be prepared and/or filed with

any Environmental Regulatory Agency for operations on the License Area. Licensee must provide Port with copies of any of the documents within the scope of this Section 21.3(d) upon Port's request.

(e) Licensee must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area. At Licensee's request, in lieu of providing Port with copies of non-privileged communications with other persons that are not Environmental Regulatory Agencies, Licensee will (1) make available for Port's review, such non-privileged communications at Licensee's San Francisco office or at Port's office, and (2) reimburse Port for additional costs related to Port's review of such non-privileged communications at Licensee's San Francisco office (including but not limited to additional time related to travel to and from Licensee's office).

(f) Port may from time to time request, and Licensee will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

21.4. Remediation Requirement.

(a) After notifying Port in accordance with Section 21.3 (Licensee's Environmental Condition Notification Requirements) and subject to Section 21.4(d), Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License, any Hazardous Material Condition occurring during the Term or while Licensee or its Agents or Invitees otherwise occupy any part of the License Area; provided Licensee must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with Section 21.3. Except as provided in the previous sentence, Licensee must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under Section 21.4(a), before this License terminates for any reason, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License: (i) any Hazardous Material Condition caused by Licensee's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Licensee's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Licensee's use of the License Area, or due to Subsequent Construction or construction of the Vertical Project.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take actions that are reasonably necessary in Port's reasonable judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area.

(d) Unless Licensee or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, under, around or about the License Area, Licensee will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date or the date of Licensee's first use of the License Area, whichever is earlier.

21.5. Pesticide Prohibition. Licensee will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of

certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage as further described in Section 21.6 of the License (Restrictions on the Use of Pesticides).

21.6. Additional Definitions.

"Environmental Laws" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees, and all permits, licenses, approvals, or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the License Area, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety, or community right-to-know requirements related to the work being performed under this License. "Environmental Laws" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016,by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"Environmental Regulatory Action" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

"Exacerbate" or "Exacerbating" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission, it being understood that the mere discovery of Hazardous Materials does not cause "Exacerbation". Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Licensee's operations, Investigations, maintenance, repair, construction of Vertical Project and Alterations under this License. "Exacerbate" also means failure to comply with the Pier 70 Risk Management Plan. "Exacerbation" has a correlative meaning.

"Handle" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "Handling" and "Handled" have correlative meanings.

"Hazardous Material" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted, or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. "Hazardous Materials" also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"Hazardous Material Claim" means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties, the State Lands Indemnified Parties, or the License Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or other Port property, the loss or restriction of the use or any amenity of the License Area or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"Hazardous Material Condition" means the Release or Exacerbation, or threatened Release or Exacerbation, of Hazardous Materials in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use in, on, under, or about the License Area during the Term or Licensee's occupancy of the License Area.

"Investigate" or "Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the License Area, any Vertical Project or any portion of the site or the Vertical Project or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the License Area or any Vertical Project.

"New Hazardous Material" means a Hazardous Material that is not a Pre-Existing Hazardous Material.

"Pier 70 Risk Management Plan" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"Pre-Existing Hazardous Materials" means any Hazardous Material existing on, in, about or around the License Area as of the Effective Date and identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"Release" means when used with respect to Hazardous Materials any accidental, actual, imminent or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"Remediate" or "Remediation" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the License Area or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"State Lands Indemnified Parties" means the State of California, the California State Lands Commission, and all of their respective heirs, legal representatives, successors and assigns, and all other Persons acting on their behalf.

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VERTICAL DDA EXHIBIT F

REAFFIRMATION OF REPRESENTATIONS AND WARRANTIES

Pursuant to Section 6.4(a)(i) of the Vertical Disposition and Development Agreement between the **CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** (**"Port"**) and [____________________], a [____________________] (**"Vertical Developer"**), dated [____________________] (**"Vertical DDA"**), Vertical Developer reaffirms to Port that the representations and warranties made by Vertical Developer and set forth in Section 21.3 of the Vertical DDA were true and accurate as of the effective date of the Vertical DDA and further represents and warrants to Port as of the date below, all of the following:

(a) That Vertical Developer is a duly organized, validly existing, and in good standing under the laws of the State of ____________. Vertical Developer has all requisite power and authority to conduct its business as presently conducted.

(b) That Vertical Developer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Vertical Developer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it will immediately notify the Port of same and the reasons therefore together with any relevant facts or information requested by Port. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of the Vertical DDA.

(c) That the Vertical DDA and all documents executed by Vertical Developer: (i) are duly authorized, executed and delivered by Vertical Developer; (ii) are legal, valid and binding obligations of Vertical Developer; and (iii) do not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject. The Transaction Documents will be a legal, valid and binding obligation of Vertical Developer, enforceable against Vertical Developer in accordance with its terms.

(d) That Vertical Developer has all requisite power and authority to execute and deliver the Transaction Documents and to carry out and perform all of the terms and covenants of the Transaction Documents.

(e) None of Vertical Developer's formation documents, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Vertical Developer to enter into and perform all of the terms and covenants of the Transaction Documents. Vertical Developer is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Vertical Developer of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened lawsuits or

proceedings or undischarged judgments affecting Vertical Developer before any court, governmental agency, or arbitrator that is reasonably expected to materially and adversely affect the enforceability of the Transaction Documents or the business, operations, assets or condition of Vertical Developer.

(f) The execution, delivery and performance of the Transaction Documents (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Vertical Developer or by which Vertical Developer's assets may be bound or affected, (B) any Law, or (C) [the articles of incorporation or the bylaws of Vertical Developer], and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Vertical Developer (other than the lien of a Mortgage in accordance with the Vertical DDA or the Parcel Lease).

(g) There is no material adverse change in Vertical Developer's financial condition and Vertical Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and Vertical Developer is not in default or claimed default under any agreement for borrowed money.

(h) Notwithstanding anything to the contrary in the Vertical DDA, the foregoing representations and warranties will survive the Closing Date.

All capitalized items not defined herein have the meanings give to them in the Vertical DDA.

IN WITNESS WHEREOF, the undersigned has executed this Reaffirmation of Representations and Warranties as of the **[insert closing date**: [____________], 20XX].

[INSERT VERTICAL DEVELOPER]

By: ______________________________
Name: ____________________________
Title: _____________________________

VDDA EXHIBIT G

WORKFORCE DEVELOPMENT PLAN

(Pier 70 28-Acre Site)

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PIER 70 28-ACRE SITE WORKFORCE DEVELOPMENT PLAN

I. Project Background. The development plan for the 28-Acre Site under the Transaction Documents provides for the development of a new mixed-use neighborhood composed of office, retail, market rate and affordable residential uses, as well as entirely new infrastructure, utilities, parks and open space. This Workforce Development Plan sets forth the activities Developer and Vertical Developer shall undertake, and require their Construction Contractors, Consultants, Subcontractors, Subconsultants, and Commercial Tenants, as applicable, to undertake, to support workforce development in both the construction and end use phases of the 28-Acre Site Project, as set forth in this Workforce Development Plan.

The Port and Developer have entered into the DDA that provides for the development of the 28-Acre Site Project in a series of Phases. In connection with the DDA, the Port and the Developer will enter into a Master Lease providing Developer the right to construct Horizontal Improvements within the 28-Acre Site Project after Port approval of Phase Submittals and issuance of necessary Regulatory Approvals. Developer will enter into contracts with Contractors and Consultants to construct all Horizontal Improvements allowed under the Master Lease.

The DDA also sets forth a process for the conveyance of Option Parcels by Parcel Leases to Vertical Developers. This Workforce Development Plan is an attachment to the Vertical DDA between Port and Vertical Developer. The Vertical DDA provides the procedures for the Port's delivery of a Parcel Lease to the Vertical Developer and sets forth the rights and obligations for the Vertical Developer's construction of Vertical Improvements and Deferred Infrastructure. Vertical Developers will enter into contracts with Construction Contractors and Consultants to construct the Vertical Improvements allowed in the Vertical DDA. Upon completion of the Vertical Improvements, the applicable Parcel Lease, between the Port and the Vertical Developer, shall govern the operation and use of the Vertical Improvements.

II. Purpose of the Workforce Development Plan. This Workforce Development Plan sets forth the employment and contracting requirements for the construction and operation of the 28-Acre Site Project. This Workforce Development Plan has been jointly prepared by the Port and Developer (on behalf of itself and each Vertical Developer), in consultation with others including OEWD and other relevant City Agencies.

The purpose of this Workforce Development Plan is to ensure training, employment and economic development opportunities are part of the development and operation of the 28-Acre Site Project. This Workforce Development Plan creates a mechanism to provide employment and economic development opportunities for economically disadvantaged persons and San Francisco residents. The Port and Developer agree that job creation and equal opportunity contracting opportunities in all areas of employment are an essential part of the redevelopment of Pier 70. The Port and Developer agree that it is in the best interests of the 28-Acre Site Project and the City for a portion of the jobs and contracting opportunities to be directed, to the extent possible based on the type of work required, and subject to collective bargaining agreements, to local, small and economically disadvantaged companies and individuals whenever there is a qualified candidate.

This Workforce Development Plan identifies goals for achieving this objective and outlines certain measures that will be undertaken in order to help ensure that these goals and objectives are successfully met. In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project.

This Workforce Development Plan requires:

- Developer or Vertical Developers to fund certain OEWD job readiness and training programs run by CityBuild and TechSF.

- Developer or Vertical Developer shall include in all leases, subleases or other occupancy contracts provisions that require all Permanent Employers that occupy more than 25,000 gsf to enter into a First Source Hiring Agreement (in the forms attached hereto as Attachment A-1 and Attachment A-2) that will require participation in the City's Workforce System towards the hiring goals of Chapter 83 hiring goals applicable to Covered Operations for First Source referrals and, where applicable, partnership with TechSF. Developer shall also include in such leases, subleases or other occupancy contracts provisions that require Lessees and service providers to identify a single point of contact and contact OEWD's Business Services team to discuss its obligations under the First Source Hiring Agreement.

- On an annual basis, Developer shall provide First Source program and contact information to Permanent Employers that occupy less than 25,000 gsf, so they may avail themselves of referral services offered by OEWD.

- Developer and Vertical Developers of projects that are not otherwise covered by local hire requirements to enter into a First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

- Developer and Vertical Developers to meet the hiring and apprenticeship goals applicable to certain construction work for Local Residents and Disadvantaged Workers for Covered Projects as set forth in Attachment B (Local Hiring Requirements).

- Developer and Vertical Developers to meet the utilization and outreach goals applicable to certain construction work for Local Business Enterprises in accordance with the requirements set forth in Attachment C (LBE Utilization Plan).

- Developer to meet the outreach goals applicable to the initial leasing of retail space suitable for use by local diverse small businesses.

The foregoing summary is provided for convenience and for informational purposes only. In case of any conflict between this Workforce Development Plan and the ***DDA***, the provisions of this Workforce Development Plan shall control.

III. Workforce Development Plan.

A. DEFINITIONS

The following terms specific to this Workforce Development Plan have the meanings given to them below or are defined where indicated. Other initially capitalized terms are defined in the **Appendix Part B** or in other Transaction Documents. This Workforce Development Plan and all Workforce-Development Plan-specific definitions will prevail over any other Transaction Document in relation to the rights and obligations of Developer's and Vertical Developers with respect to workforce development. All references to the DDA or Vertical DDA, as applicable, include this Workforce Development Plan unless explicitly stated otherwise.[1]

"**Chapter 83**" is defined in Section III.D.2 hereof.

"**Commercial Activity**" means retail sales and services, restaurant, hotel, education and office uses, technology and biotechnology business, and any other non-profit or for-profit commercial uses permitted under the SUD that are conducted within a Vertical Improvement.

"**Commercial Lease**" is defined in Section III.D.2 hereof.

"**Commercial Tenant**" means a tenant, subtenant or other occupant that enters into a lease, sublease or other occupancy contract for a Covered Operation.

"**Construction Contractor**" means a construction contractor hired by or on behalf of Developer or a Vertical Developer who performs Construction Work on the 28-Acre Site or other construction work otherwise covered under the LBE Utilization Plan or First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

"**Construction Work**" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement.

"**Construction Workforce Requirements**" is defined in Section III.C.1 hereof.

"**Consultant**" is defined in Attachment C attached hereto.

"**Covered Operations**" means (i) Commercial Activity which results in the expansion of entry and apprentice level positions that are located within a newly constructed Vertical Improvement or an addition, or alteration thereto, where the Vertical Improvement (or addition or alteration thereto) contains more than 25,000 gross square feet in floor area, and (ii) the operation of a Residential Project containing more than 25,000 square feet or more than 10 Residential Units. Covered Operations do not include (a) any operations or activities conducted by tenants, subtenants or owners of Residential Units, (b) Residential Projects containing less than 25,000 square feet or fewer than 10 dwelling units, (c) Vertical Improvements containing less than 25,000 square feet and (d) activities or operations conducted by tenants, subtenants and other occupants of less than 25,000 gross square feet of sublease space within a Vertical Improvement.

"**Disadvantaged Worker(s)**" is defined in Attachment B attached hereto.

"**Final, Binding and Non-Appealable**" means 90-days after the subject approval, or if a third party files an action challenging the approval during such 90-day period, thirty days after the final judgment or other resolution of the action or issue.

"**FSHA**" means the City's First Source Hiring Administration.

"**FSHA Operations Agreement**" means a First Source Hiring Agreement for Business, Commercial, Operation and Lease Occupancy of the Building, for Permanent Employers or for Permanent Tech Employers, as more particularly described in Section III.D.2. hereof.

"**Internship**" shall mean a learning and career preparation method that occurs within the context of a course or program. Internships include career exploration and direct experience and include guidance by staff, mentors, employers, and peers. An intern obtains a good understanding of the requirements of the occupation and an overview of all aspects of their chosen industry, and develops college and career readiness and success skills, such as critical thinking, problem-solving, collaboration and communication.

"**Job Readiness and Training Funds**" is defined in Section III.B.1 hereof.

"**Lessee**" shall mean a Tenant, business operator and any other occupant of a commercial office building. Lessee shall include every person, tenant, subtenant, or any other entity occupying the building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

"**Local Business Enterprise(s)**" or "**LBE**" means a firm that has been certified as an LBE as set forth in Administrative Code Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance).

"**Local Resident(s)**" is defined on Attachment C attached hereto.

"**NEDO**" is a neighborhood economic development organization.

"**OEWD**" means the City's Office of Economic & Workforce Development.

"**Operations Workforce Requirements**" is defined in Section D.1 hereof.

"**Permanent Employer**" shall mean each employer in a Covered Operation.

"**Permanent Tech Employer**" shall mean a Permanent Employer that both (i) employs primarily Technology Occupations and Technology-Enabled Occupations, and (ii) occupies more than 25,000 gsf within the 28-Acre Site Project.

"**Prevailing Rate of Wages**". The Prevailing Rate of Wages as defined in Section 6.1, and established under subsections 6.22(e)(3) and 6.22(f), of the Administrative Code.

"**Prevailing Wage Covered Project**" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

"**Referral**" shall mean a member of the Workforce System who has participated in an OEWD workforce training program.

"**Registered Apprenticeship**" shall mean a work experience that combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at the outset of a training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Registered apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, registered apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

"**Subconsultant**" is defined in Attachment C attached hereto.

"**Subcontractor**" is defined in Attachment A3 attached hereto.

"**TechSF**" shall mean a program which has been established by the City and County of San Francisco and managed by the OEWD, to provide training, education and job placement assistance services to jobseekers, and connects local employers to a qualified workforce in order to help all involved benefit from the growth of the local technology industry, Technology-Enabled Occupations and Technology Occupations across all sectors. For the purposes of this document, this term will refer to any successor programs, which provide similar services.

"**Technology-Enabled Occupations**" shall mean occupations that require skills related to Information, Media and ICT Literacy as highlighted in California's Digital Literacy definition, "[one's capacity] for using digital technology, communications tools, and/or networks in creating, accessing, analyzing, managing, integrating, evaluating, and communicating information in order to function in a knowledge based economy and society." Technology-Enabled Occupations require the ability to analyze, access and work with common computing and communications devices, operating systems, networking systems and applications. These occupations require the ability to understand and use ICT computing, communications and information technologies; use technologies for advance research, analysis and administrative operations. These occupations also require the ability to create, interpret and work with an increasing variety of digital media.

"Technology Occupations" shall mean positions that require core competencies in information and communication technology (ICT) systems and solutions. These occupations develop and deploy technologies and infrastructures to both support their enterprise and product users. Additionally, technology occupations require skills in research, design, development and analysis of custom technological products; including but not limited to software, web, application, and cloud-based products. Technology occupations also include positions that are related to the sales, marketing and engineering of these technology-based products. Technology occupations typically occur in the major industry clusters as defined by the North American Industry Classification System (NAICS): Software Publishers; Wired Telecommunications; Wireless Telecommunications; Satellite Communications; Data Processing, Hosting and Related Services; Internet Publishing and Broadcasting and Web Search Portals; and Computer Systems Design. Major technology occupation clusters as identified by the Bureau of Labor Statistics include but are not limited to: information support and services; network systems; program and software development; and web and digital communications.

"Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

"Work Experience" shall mean any experience which combine an on-the-job learning component with related classroom instruction designed to maximize the value of on-the-job experiences. Work Experience Education is classified in the California Education Code as General, Exploratory, or Vocational. General work experience exposes students to the world of work; exploratory work experience also allows students to experience a variety of careers; and vocational work experience allows students to explore a career interest in greater depth.

"Workforce System" is defined in Attachment A1 attached hereto.

B. WORKFORCE JOB READINESS AND TRAINING FUNDS.

1. **Application.** Developer will provide OEWD with $1 Million in funding to support the job training and readiness programs run by CityBuild and TechSF as more particularly set forth in this **Section III.B.1** (all funds required under this Section III.B.1, the **"Job Readiness and Training Funds"**). The funding requirements under Sections III.B.2 and III.B.3 will be binding on Developer and its successors and assigns under the DDA. The funding requirements under Section III.B.4 will be binding on Developer or may be assigned to the applicable Vertical Developer under the terms of their Vertical DDA and/or Parcel Lease.

2. **CityBuild Program.** The 28-Acre Site Project will pay a total of **$250,000** across the three Phases of development in accordance with this Section III.B.2 that the City will use to fund CityBuild programs.

   a. Purpose and Amount. The 28-Acre Site Project will pay the City a total of $250,000 that the City will use to fund CityBuild programs run by OEWD's Workforce Development Division. Funds will be allocated by amount and program in OEWD's discretion, but such programs may include the CityBuild Academy, an 18-week pre-apprenticeship training

program that prepares citywide residents for entry into the trades; the Construction Administration & Professional Service Academy, an 18-week program offered at City College of San Francisco that prepares San Francisco residents for entry-level careers as professional construction office administrators; or the CityBuild Women's Mentorship Program, a volunteer program that connects women construction leaders with experienced professional and mentors.

b. Manner and Timing of Payment. Developer will pay the CityBuild program funds in accordance with the following schedule:

i. Phase 1: Developer will pay the City $83,333 within fifteen days after the Phase 1 Approval becomes Final, Binding and Non-Appealable.

ii. Phase 2: Developer will pay the City $83,333 within fifteen days after the Phase 2 Approval becomes Final, Binding and Non-Appealable.

iii. Phase 3: Developer will pay the City $83,334 within fifteen days after the Phase 3 Approval becomes Final, Binding and Non-Appealable.

3. **CityBuild Services.** The 28-Acre Site Project will pay a total of **$100,000** that will be used to remove barriers to permanent employment.

a. Purpose and Amount. The 28-Acre Site Project will pay $100,000 to fund the delivery of services to assist individuals, interested in entering CityBuild or the trades, with addressing barriers to employment. The services will offer case management and supportive services (driver license, housing, union dues, tools, uniform/boots). The resources will be primarily for Bayview Hunter's Point neighborhood residents and surrounding areas. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction. These funds will be distributed directly to Young Community Developers. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction.

b. Manner and Timing of Payment. Developer will make the payment directly to Young Community Developers within fifteen days after the Phase 1 Approval become Final, Binding and Non-Appealable.

4. **TechSF Bridge Training for BVHP/Dogpatch Communities & Targeted End Use Jobs.** The 28-Acre Site Project will pay $650,000 associated with commercial-office development in Phase 1 and in future Phases, in accordance with this Section.

a. Purpose and Amount. The Vertical Developers of the first commercial-office project in Phase 1 and the Vertical Developer of the first commercial-office project to be developed in any subsequent Phase will be required to pay funds to the City that will be used by OEWD to support moderate-skilled job training and education programs that prepare individuals in the Bayview Hunter's Point neighborhood residents and surrounding areas in zip codes 94124, 94107, 94103, 94102, 94110, 94134, 94115, and 94112 and other disadvantaged citywide residents for technology (e.g., IT administrator, data scientist, etc.) and technology-enabled (e.g., office administration) office skills positions for Lessee's new employee hiring and incumbent employee advancement offered through the TechSF initiative or OEWD-identified partners. Tech SF will customize technology training based on the types of Lessee leasing space within the Phase, which may include office skills, advanced manufacturing or biotech technology training.

b. Manner and Timing of Payment.

   i. Phase 1: The Vertical DDA for the first office-commercial project in Phase 1 will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

   ii. Phase 2 or 3: The Vertical DDA for the first office-commercial project to be proposed in Phase 2 (or the first office-commercial project to be proposed in Phase 3 if no office commercial project is proposed for Phase 2) will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

c. Accounting. Developer and Vertical Developers will have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in accordance with the provisions of this **Section III.B.4**. The Job Readiness and Training Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall maintain records as part of the City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available upon Developer's request.

d. Board Authorization. By approving the DDA and form of Vertical DDA, including this Workforce Development Plan, the Board of Supervisors authorizes the City (including OEWD) to accept and expend the Job Readiness and Training Funds paid by the Developer as set forth herein. The Board of Supervisors also agrees that any interest earned on any the Job Readiness and Training Funds shall remain in designated accounts for use by OEWD for workforce readiness and training consistent with this Exhibit G and shall not be transferred to the City's general fund.

C. CONSTRUCTION WORK

1. **Application**. Developers, Vertical Developers and Construction Contractors shall comply with the applicable provisions of this **Section III.C.1** (the "**Construction Workforce Requirements**") that are requirements of the DDA with respect to Developer, and of the Vertical DDA with respect to Vertical Developers.

2. **Local Hiring Requirements**. Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must comply with the Local Hiring Requirements set forth on Attachment B attached hereto with respect to Covered Projects (as defined therein).

3. **First Source Hiring Program for Construction Work.** Developer, with respect to any Horizontal Improvements that are not subject to the Local Hiring Requirements, and each Vertical Developer with respect to each Vertical Improvement that is not subject to the Local Hiring Requirements, will enter into a Memorandum of Understanding with the City's First Source Hiring Administration in the form attached hereto as Attachment A-3 under which each Developer and Vertical Developer must include in their contracts with Construction Contractors for Construction Work that is not subject to the Local Hiring Requirements, a requirement that the applicable Construction Contractor enter into a First Source Hiring Agreement in the form attached thereto as Exhibit A, and to provide a signed copy of the relevant Form exhibits to the FSHA.

4. **Local Business Enterprise Requirements**. Developer, all Vertical Developers and their respective Contractors and Consultants (as defined in Attachment C) must comply with the Local Business Enterprise Utilization Program set forth in Attachment C hereto.

5. **Obligations; Limitations on Liability**. Developer and each Vertical Developer shall use good faith efforts, working with the OEWD or its designee, to enforce the applicable Construction Workforce Requirements with respect to its Construction Contractors (as defined above), Contractors and Consultants (as defined in Attachment C), and each Construction Contractor, Contractor and Consultant, as applicable, shall use good faith efforts, working with OEWD or its designee, to enforce the Construction Workforce Requirements with respect to its Subcontractors and Subconsultants (regardless of tier). However, Developer and Vertical Developers' shall not be liable for the failure of their respective Construction Contractors, Contractors and Consultants, and Construction Contractors, Contractors and Consultants shall not be liable for the failure of their respective Subcontractors and Subconsultants.

6. **Prevailing Wages.**

   a. Prevailing Wages. Subject to any collective bargaining agreements in the building trades, Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must (A) pay, and

shall require its respective Construction Contractors (and subcontractors regardless of tier) to pay, all persons performing work on a Prevailing Wage Covered Project no less than the applicable Prevailing Rate of Wages, and (B) comply with, and require its Contractors and Subcontractors to comply with, the provisions of Administrative Code 23.61, which requires Contractors and Subcontractors to comply with Administrative Code subsections 6.22(e)(5), (6), (7) and subsection 6.22(f) for any Prevailing Wage Covered Project.

b. Enforcement. City's Office of Labor Standards Enforcement ("*OLSE*") enforces labor laws adopted by San Francisco voters and the San Francisco Board of Supervisors. The Port designates OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the Work.

D. PROJECT OPERATIONS

1. Application. Covered Operations within the 28-Acre Site Project will be subject to the applicable First Source Hiring Requirements (including TechSF) and Retail Marketing Requirements set forth in this **Section III.D.1** (collectively, the "**Operations Workforce Requirements**"). The Operations Workforce Requirements will be binding on Vertical Developers entering into Parcel Leases.

2. First Source Hiring Program for Operations.

a. First Source Hiring Agreements. Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to comply with the operational requirements of the then-current Administrative Code Chapter 83 ("**Chapter 83**") in accordance with this Workforce Development Plan (subject to limitations on Changes to Existing City Laws as provided in Section 5.3 of the Development Agreement). Compliance with Chapter 83 will be achieved by the following:

i. Vertical Developer will include in all leases, subleases or other occupancy contracts for Covered Operations (each, a "**Commercial Lease**"), a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment A-1.

ii. Vertical Developer will require the applicable party to provide a signed copy of each FSHA Operations Agreement within 10 business days of execution of the Commercial Lease.

iii. With the execution of each applicable Commercial Lease, Vertical Developer will provide information and require Lessee to notify OEWD Business Services.

b. First Source Hiring Agreements for Permanent Tech Employers. The purpose of the FSHA Tech Operations Agreement is to facilitate job training and education opportunities for participants in the TechSF Program. In addition to the First Source Hiring Agreements above, Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to :

i. If Vertical Developer is a Permanent Tech Employer, provide hiring executive(s) contact information to OEWD Business Services for itself, and enter into a FSHA Tech Operations Agreement in the form of Attachment A-2;

ii. Vertical Developer will include in all lease, subleases or other occupancy contracts for Covered Operations (each, a **"Commercial Lease"**), a requirement that the Commercial Tenant to enter into the FSHA Tech Operations Agreement in the form in Attachment A-2; and

iii. Provide contact information for any Commercial Tenant that is a Permanent Tech Employer. Vertical Developer will provide the executive(s) contact information within 10 days of execution of, or, if available, prior to execution of the applicable Commercial Lease, and will provide updated contact information annually thereafter.

iv. With the execution of each applicable Commercial Lease with a Permanent Tech Employer, Vertical Developer will provide information related to TechSF and require Lessee to notify OEWD Business Services staff. Vertical Developer will only be required to provide information as supplied to it by OEWD Business Services staff. If no information is supplied by OEWD Business Services staff, then this subsection will be deemed complete.

3. Local Diverse Small Business Retail Marketing Program.

a. Application. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 in accordance with this Section III.D.3.

b. Program Goals. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 designed to (i) attract and support diverse small businesses in retail, PDR, arts and commercial spaces within the 28-Acre Site, with a specific focus on District 10

entrepreneurs and businesses, and to (ii) leverage resources available through existing local, state and federal programs delivered through local partner organizations (e.g., OEWD, NEDOs, *etc.*). Developer, working with its Vertical Developer Affiliates, will seek to incorporate 5% local small diverse businesses within traditional retail and PDR spaces in the 28-Acre Site Project, excluding Parcel E4.

c. Marketing Program.

i. Using its best available information, Developer will provide in each Phase Submittal, the projected commercial space available in the Phase and a general overview of retail, PDR, arts and commercial spaces that could be available for sublease within the applicable Phase to local diverse small businesses. To the extent feasible, the information will include the items described below, at a conceptual level, with the understanding that the description will be based on Developer's best projections at the time, but will be subject to change as the Phase is developed:

(1) Potential type of use: retail, services, PDR, restaurant, etc.;

(2) Type of space: new construction, rehabilitated space, floor to ceiling heights, likely mechanical systems, loading access, parking availability;

(3) Approximate size of spaces;

(4) Location: building parcels and street/park frontage locations;

(5) Projected timing: timing for delivery of core and shell space availability and anticipated lease sign target date prior to the delivery of core and shell; and

(6) Contact: name of broker or Developer contact for any follow up questions.

ii. Developer will provide Port and OEWD with an update to the information described above within six to eight months after the initial Phase Submittal if the information provided with the Phase Submittal has changed materially.

iii. During each Phase, Developer will coordinate with OEWD and real estate brokers with the goal of identifying small businesses that might lease space within Vertical Improvements in the Phase by complying with the following process:

(1) From and after the applicable Phase Approval, Developer provide information on the potential leasing opportunities to OEWD. OEWD to coordinate businesses, entrepreneurs, and NEDOs about potential opportunities.

(2) OEWD/Small Business Services will provide support through during lease negotiations with local diverse small businesses identified through this marketing program and engage 1-2 NEDOs that serve small businesses with specific focus on those based in District 10. It is anticipated that OEWD will require each NEDO to provide the following services:

(a) Initial consultation to determine potential businesses and entrepreneurs to conduct outreach about potential opportunities at the 28-Acre Site.

(b) Consultation with entrepreneurs and businesses necessary to successfully locate their business at the 28-Acre Site. This could include services typically provided by NEDOs such as business plan support, small business financing, loan applications, understanding bank underwriting criteria, and training in basic financial management concepts, including, building equity, maintaining adequate working capital, managing growth and other issues critical to the growth and financial stability of the businesses.

(c) NEDOs will identify businesses/entrepreneurs that are eligible and interested in leasing space at Pier 70.

(d) NEDOs will share information on outreach events and conversations with OEWD and Developer.

(e) Provide support during lease negotiations with local diverse small businesses identified through this marketing program.

iv. Subject to restrictions on visitor-serving Priority Retail Frontages on Parcels E1, E2 and E3 set forth in Section 7.20 of the DDA, Developer, working through its Vertical Developer Affiliates, will specifically consider neighborhood-serving retail and services that could potentially sublease space subject to Parcel Leases between Port and Vertical Developer Affiliates, including grocery stores, dry cleaners, hardware, after-school programs, recreation and activity spaces, and similar neighborhood-serving businesses.

v. Developer, through its Vertical Developer Affiliates, will engage brokers to manage the overall marketing and outreach strategy for leasing of commercial, retail, and neighborhood spaces within

Option Parcels taken down by Vertical Developer Affiliates, including the Building 12 market hall. When entering into such contracts with brokers, Developer will emphasize the goals of the small business program and the marketing information prepared by Developer at the beginning of each Phase and will require the applicable broker(s) to engage with the businesses that OEWD/NEDOs have identified in clause (iii) above for the potential spaces available.

d. Sublease Commitments. Developer, working through its Vertical Developer Affiliates, will use good faith efforts to market new sublease space coming on the market with the initial opening of each Vertical Improvement to diverse local small businesses that it identifies through the marketing program described in **Subsection** III.**D.3.c** above, at fair market rents and subject to then-existing market conditions. In order to provide time for the small business to develop, Developer will provide a mutual option to extend after the initial lease term. The initial term and option to extend would be a minimum of 8 years. In its evaluation of potential subtenants hereunder, Developer, acting through its Vertical Developer Affiliates, will consider the history and past success of the proposed retail subtenant and its business, as well as the type of business, its ability to enhance the overall 28-Acre Site Project, and its long term viability. Each such potential subtenant must meet standard experience and financial qualifications associated with investment reporting, including (i) the proposed programmatic layout; (ii) its long term proforma and business model; and (iii) financial qualifications, which may include reasonable guarantees of performance.

E. GENERAL PROVISIONS

1. **Enforcement**. OEWD shall have the authority to enforce the Construction Workforce Requirements and the Operations Workforce Requirements. The Port and OEWD staff agree to work cooperatively to create efficiencies and avoid redundancies and to implement this Workforce Development Plan in good faith, and to work with all of the 28-Acre Site Project's stakeholders, including Developer and Vertical Developers, Construction Contractors (and Subcontractors) and Permanent Employers, in a fair, nondiscriminatory and consistent manner.

2. **Third Party Beneficiaries**. Each contract for Construction Work and Covered Operations shall provide that OEWD shall have third party beneficiary rights thereunder for the limited purpose of enforcing the requirements of this Workforce Development Plan applicable to such party directly against such party.

3. **Flexibility**. Some jobs will be better suited to meeting or exceeding the hiring goals than others, hence all workforce hiring goals under a Construction Contract will be cumulative, not individual, goals for that Construction Contract or

Permanent Employer. In addition, Developer and Vertical Developers shall have the right to reasonably spread the workforce goals, in different percentages, among separate Construction Contracts or Permanent Employers so long as the cumulative goals among all of the Construction Contracts or Permanent Employers at any given time meet the requirements of this Workforce Development Plan. The parties shall make such modifications to the applicable First Source Hiring Agreements consistent with Developer and Vertical Developers' allocation. This acknowledgement does not alter in any way the requirement that Developer, Vertical Developers, Construction Contractors and Permanent Employers comply with good faith effort obligations to meet their respective participation goals for the Construction Work and Covered Operations.

4. **Exclusivity**. In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project. Without limiting the generality of the foregoing, if the City implements or modifies any workforce development policy or requirements after the date of this Workforce Development Plan, whether relating to construction or operations, that would otherwise apply to the 28-Acre Site Project and Developer asserts that such change as applied to the 28-Acre Site Project would be prohibited by the Development Agreement (including an increase in the obligations of Developer, any Vertical Developer, or their contractors under any provisions of the DDA or any Vertical DDA), then the parties shall resolve the issue through the Dispute Resolution procedures of Section III.F below.

F. **DISPUTE RESOLUTION.**

1. **Meet and Confer**. In the event of any dispute under this Workforce Development Plan (including, without limitation, as to compliance with this Workforce Development Plan), the parties to such dispute shall meet and confer in an attempt to resolve the dispute. The parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Arbitration Provisions of Attachment D (Dispute Resolution) attached hereto, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction.

2. **Arbitration**. Disputes arising under this Workforce Development Plan may be submitted to the provisions of Attachment D (Dispute Resolution) hereof if the meet and confer provision of Section III.F.1 above does not result in resolution of the dispute.

Attachment A-1

Form of First Source Hiring Agreement for Operations

City and County of San Francisco First Source Hiring Program

Office of Economic and Workforce Development Workforce Development Division

Attachment A-1: First Source Hiring Agreement

For Business, Commercial, Operation and Lease Occupancy of a Vertical Improvement

This First Source Hiring Agreement (this "FSHA Operations Agreement"), is made as of , by and between (the "Lessee"), and the First Source Hiring Administration, (the "FSHA"), collectively the "Parties":

RECITALS

WHEREAS, Lessee has plans to occupy a portion of the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between [Developer/Vertical Developer] and the City acting through the San Francisco Port Commission;

WHEREAS, the **[Developer/Vertical Developer]** was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract");and

WHEREAS, as a material part of the consideration given by Lessee under the Contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");

[Use the following WHEREAS for Vertical Developer operations of Vertical Improvements]

WHEREAS, Lessee has plans to operate the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between Lessee and the City acting through the San Francisco Port Commission; and

[Use the following WHEREAS for subtenants of Vertical Improvements]

WHEREAS, as a material part of the consideration given by Lessee under the property contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");]

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Operations Agreement, initially capitalized terms shall be defined as follows:

a. "Entry Level Position" shall mean any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.

b. "Developer" shall mean FC Pier 70, LLC, a Delaware limited liability company, including any successor during the term of this FSHA Operations Agreement.

c. "Lessee" shall mean every commercial tenant, subtenant, or any other entity occupying a Workforce Improvement for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office ofTreasurer required to enter into a First Source Hiring Agreement as defined in Chapter 83.

d. "Project Site" shall mean the area consisting of an approximately 28-acre site located in the Pier 70 area bounded by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east.

e. "Referral" shall mean a member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

f. "Vertical Developer" shall mean *[insert name of applicable Vertical Developer]*, including any successor during the term of a FSHA Operations Agreement.

g. "Vertical Improvement" shall mean a new building that is built at the Project Site.

h. "Workforce Improvement" shall mean Vertical Improvements that are subject to Chapter 83.

i. Workforce System: The First Source Hiring Administration established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire.

Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. Notwithstanding anything to the contrary herein, nothing in this FSHA Operations Agreement precludes Lessee from immediately advertising and filling an Entry Level Position that performs essential functions of its operation prior to notifying OEWD provided, however, the obligations of this FSHA Operation Agreement to make good faith efforts to fill such vacancies permanently with Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business. If Lessee has an immediate need to fill an Entry Level Position that performs essential functions, Lessee shall provide OEWD notice of such position, and the fact that there is an immediate need to fill such position, on or before the date such position is advertised to the general public.

c. This FSHA Operations Agreement shall be in full force and effect as to each Workforce Improvement until ten (10) years following the date Lessee opens for business at the Premises, and all subsequent leases within 10 years of that date. After that date, this FSHA Operations Agreement shall terminate and be of no further force and effect on the parties hereto, but the requirements of Chapter 83 shall continue to apply.

d. Unless otherwise agreed to by the Parties, compliance with this FSHA Operations Agreement shall be determined on an individual Workforce Improvement basis and will be measured by dividing the number of new Entry Level Positions occupied by Referrals by the total number of new Entry Level Positions within the Workforce Improvement. Notwithstanding anything to the contrary, new Entry Level Positions occupied by Referrals within the Project Site, but not within the Vertical Improvement, may, at the election of Developer, be counted towards compliance of the Workforce Improvement for this Agreement.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this FSHA Operations Agreement. Determination of good faith efforts shall be based on all of the following:

a. Lessee will execute this FSHA Operations Agreement and Exhibit B-1 attached hereto upon entering into leases for the commercial space of the Workforce Improvement. Lessee will also accurately complete and submit Exhibit B-1 annually to reflect employment conditions.

b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this FSHA Operations Agreement.

c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public, subject to the provisions of Section 2 above. The Lessee must identify a single point of contact responsible for communicating Entry Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.

d. Lessee attempts to fill at least 50% of open Entry Level Positions with Referrals. Specific hiring decisions shall be the sole discretion of the Lessee.

e. Nothing in this FSHA Operations Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this FSHA Operations Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Operations Agreement.

Lessee's failure to meet the criteria set forth in this Section 3 does not impute "bad faith", but shall trigger a review of the referral process and compliance with this FSHA Operations Agreement. Failure and noncompliance with this FSHA Operations Agreement will result in penalties as defined in SF Administrative Code Chapter 83. Lessee agrees to review SF Administrative Code Chapter 83, and execution of the FSHA Operations Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this FSHA Operations Agreement shall be in writing and sent via mail or email as follows:

If to OEWD:

ATTN:

If to Lessee:

ATTN:

5. ENTIRE AGREEMENT

This FSHA Operations Agreement and the Transaction Documents contain the entire agreement between the parties and shall not be modified in any manner except by an

instrument in writing executed by the parties or their respective successors. If any term or provision of this FSHA Operations Agreement shall be held invalid or unenforceable, the remainder of this FSHA Operations Agreement shall not be affected. If this FSHA Operations Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This FSHA Operations Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Lessee, their obligations shall be joint and several.

Section titles and captions contained in this FSHA Operations Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This FSHA Operations Agreement shall be governed and construed by laws of the State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the following have executed this FSHA Operations Agreement as of the date set forth above.

Date:____________

Signature:______________________________________

Name of Authorized Signer: ______________________________________

Company: ______________________________________

Address:______________________________________

Phone:______________________________________

Email: ______________________________________

Business Name: ______________________ **Phone:** ______________________

Main Contact: ______________________ **Email:** ______________________

______________________________________ ______________

Signature of authorized representative* **Date**

**By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of Exhibit B First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed Exhibit B and Exhibit B-1. Lessee will also complete and submit an Exhibit B-1 annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) If an **Entry Level Position** becomes available.

Section 1: Select your Industry

- ☐ Auto Repair
- ☐ Business Services
- ☐ Consulting
- ☐ Construction
- ☐ Government Contract
- ☐ Education
- ☐ Food and Drink
- ☐ Entertainment
- ☐ Elder Care
- ☐ Financial Services
- ☐ Healthcare
- ☐ Insurance
- ☐ Manufacturing
- ☐ I don't see my industry *(Please Describe)*______________________
- ☐ Personal Services
- ☐ Professionals
- ☐ Real Estate
- ☐ Retail
- ☐ Security
- ☐ Wholesale

Section 2: Describe Primary Business Activity

____

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
mailto:Business.Services@sfgov.orgWebsite: www.workforcedevelopmentsf.org

Attachment A-2

Form of First Source Hiring Agreement for Tech Operations

[see attached]

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 OWED, not to be unreasonably withheld. The TechSF Community Benefits Program may be revised annually with the consent of OEWD. The following measures (which may be in addition to other measures reasonably implemented by Lessee) will qualify as compliance with this requirement:

a. Provide indoor space to host temporary jobseeker networking, career panel and other OEWD-identified job placement assistance events related to technology or technology-

enabled occupations through the Workforce System. OEWD/Tech SF would manage the planning, coordination and marketing for events. Programming may include one of the following:

i. hosting one event per year at site location for up to 150 individuals, if requested by OEWD/Tech SF. If no such request is made, then this subsection will be deemed to have been satisfied for the year.
ii. participating in two additional TechSF activities per year.

b. Host at least 5 Work Experience and/or Internship opportunities for every 100 permanent employees per year, targeting OEWD Referrals and Bayview Hunter's Point and surrounding area neighborhood residents, and other Disadvantaged Workers.

c. Volunteer employee time for on-site training opportunities, which could include workplace tours, job shadowing, classroom lectures, mock interviews, career panels, resume workshops, mentoring, student showcases or other supportive activities.
    i. Lessee shall provide 100 employee hours per year (e.g. 25 employees at 4 hours each or other combination to be determined by the Lessee), through company's Community Social Responsibility (CSR) agenda or other policies.

d. Target creating up to five (5) Registered Apprenticeship positions (as that term is defined in the Workforce Development Plan) for every 100 permanent employees, per year, to the extent a USDOL or DAS approved training program exists within the City of San Francisco for occupations which the Lessee is currently hiring for, and interview qualified Referrals through the TechSF Initiative.

Lessee's failure to prepare and implement the TechSF Community Benefits Program set forth in this Section 3 does not impute "bad faith" but shall trigger a review of the referral process and compliance with this Agreement. Violations of this Agreement will be subject to penalties outlined in Chapter 83.

4. COLLECTIVE BARGAINING AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (**"Collective Bargaining Agreements"**). In the event of a conflict between this Agreement and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Agreement.

5. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

6. ENTIRE AGREEMENT; MISC.

This Agreement contains the entire agreement between the parties with respect to the subject matter thereunder and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If this Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Lessee, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: ________

Signature:: ____________________
Name of Authorized Signer: ____________________
Company: ____________________
Address: ____________________
Phone: ____________________
Email: ____________________

City and County of San Francisco **First Source Hiring Program**

Office of Economic and Workforce Development
Workforce Development Division

Attachment A3: First Source Hiring Agreement For Construction

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of , by and between the City and County of San Francisco (the "City") through its First Source Hiring Administration ("FSHA") and ("Project Sponsor").

WHEREAS, Project Sponsor, as developer, proposes to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"); and

WHEREAS, the Administrative Code of the City provides at Chapter 83 for a "First Source Hiring Program" which has as its purpose the creation of employment opportunities for qualified Economically Disadvantaged Individuals (as defined in Exhibit A); and

WHEREAS, the Project requires a building permit for a commercial activity of greater than 25,000 square feet and/or is a residential project greater than ten (10) units and therefore falls within the scope of the Chapter 83 of the Administrative Code; and

WHEREAS, Project Sponsor wishes to make a good faith effort to comply with the City's First Source Hiring Program.

Therefore, the parties to this Memorandum of Understanding agree as follows:

A. Project Sponsor, upon entering into a contract for the construction of the Project with Contractor after the date of this MOU, will include in that contract a provision requiring the Contractor to enter into a First Source Hiring Agreement in the form attached hereto as Exhibit A. It is the Project Sponsor's responsibility to provide a signed copy of Exhibit A to First Source Hiring program and CityBuild within 10 business days of execution.

B. CityBuild shall represent the First Source Hiring Administration and will provide referrals of Qualified (as defined in Exhibit A) Economically Disadvantaged Individuals for employment on the construction phase of the Project as required under

Chapter 83. The First Source Hiring Program will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent jobs located within the commercial space of the Project.

C. The owners or residents of the residential units within the Project shall have no obligations under this MOU, or the attached First Source Hiring Agreement.

D. FSHA shall advise Project Sponsor, in writing, of any alleged breach on the part of the Project's contractor and/or tenant(s) with regard to participation in the First Source Hiring Program at the Project prior to seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code.

E. As stated in Section 83.10(d) of the Administrative Code, if Project Sponsor fulfills its obligations as set forth in Chapter 83, it shall not be held responsible for the failure of a contractor or commercial tenant to comply with the requirements of Chapter 83.

F. This MOU is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code. The parties agree that this MOU shall be recorded and that it may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

G. Except as set forth in Section E, above: (1) this MOU shall be binding on and inure to the benefit of all successors and assigns of Project Sponsor having an interest in the Project and (2) Project Sponsor shall require that its obligations under this MOU shall be assumed in writing by its successors and assigns. Upon Project Sponsor's sale, assignment or transfer of title to the Project, it shall be relieved of all further obligations or liabilities under this MOU.

Signature: ______________________________ Date:

Name of Authorized Signer: Email:

Company: Phone:

Address:

Project Sponsor:

Contact: Phone:

Address: Email:

______________________________ Date:

First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl. San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager, ken.nim@sfgov.org

Exhibit A:
First Source Hiring Agreement

This First Source Hiring Agreement (this "Agreement"), is made as of , by and between , the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"), and a copy of this Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.

b. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.

c. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on the Project.

d. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.

e. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.

f. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.

g. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.

h. "Entry Level Position". A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.

i. "First Opportunity". Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.

j. "Job Classification". Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

k. "Job Notification". Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract..

l. "Publicize". Advertise or post available employment information, including participation in job fairs or other forums.

m. "Qualified". An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this Agreement.

n. "System". The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.

o. "System Referrals". Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.

p. "Subcontractor". A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)'s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor's employment needs under the Contract:

i. On Exhibit A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on the project for each trade.

ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.

iii. Contractor will collaborate with CityBuild staff to identify, by trade, the number of Core workers at project start and the number of workers at project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.

iv. Contractor and Subcontractors will provide documented verification that its "core" employees for this contract meet the definition listed in Section 1.a.

b.

i. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the project.

ii. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:

(A) If Contractor meets the criteria in Section 5(a) below that establishes "good faith efforts" of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and

(B) After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes "good faith efforts" of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.

c. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the first opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process, Contractor's only obligations with regards to any available Entry Level Positions subject to such collective bargaining agreement(s) during the term of the Contract shall be the following:

a. Contractor shall notify the appropriate union(s) of the Contractor's obligations under this Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).

b. Contractor shall use "name call" privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

5. CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction Exhibit A-1: CityBuild Workforce Projection Form 1; and

b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this Agreement. Such review shall be conducted by FSHA in accordance with Section 11(c) below.

c. Meet with the Project's owner, developer, general contractor, or CityBuild representative to review and discuss your plan to meet your local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.

d. Contact a CityBuild representative to review your hiring projections and goals for the Project. The Project developer and/or Contractor must take active steps to advise all of its Subcontractors of the local hiring obligations on the Project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the project

e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying your expected hiring needs during the Project's duration.

f. Notify your respective union(s) regarding your local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate your union's collective bargaining agreement(s).

g. Be sure to reserve your "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable collective bargaining agreement(s).

h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on the Project in a timely matter in order to facilitate CityBuild's notification to these unions of the Project's workforce requirements.

i. Submit a "Job Request" in the form attached hereto as Attachment A-1, Form 3, to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). You should simultaneously contact your union about the position as well, and let them know that you have contacted CityBuild as part of your local hiring obligations.

j. Developer has an ongoing, affirmative obligation and must advise each of its Subcontractors of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the project, including openings that arise from layoffs of original crew. Developer/contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the developer/contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.

k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Project developer and/or Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Project developer and/or Contractor will request a meeting with the Project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.

l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Project, source of hire, and any other pertinent information as pertain to compliance with this Agreement.

m. Maintain accurate records of your efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor and/or Project developer through a San Francisco community-based organization whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Project developer and/or Contractor on a project-by-project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and the City's online project reporting system (currently Elation), provided, however, that Contractor shall retain the primary responsibility for meeting the

requirements imposed under this Agreement. Contractor shall ensure that this Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

8. CONTRACTOR'S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this Agreement, CityBuild shall:

a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.

b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor's Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;

c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;

d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;

e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;

f. Provide Contractor with reporting forms for monitoring the requirements of this Agreement; and

g. Monitor the performance of the Agreement by examination of records of Contractor as submitted in accordance with the requirements of this Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:

(1) Applicants
(2) Job offers
(3) Hires
(4) Rejections of applicants

b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.

c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this Agreement.

12. DURATION OF THIS AGREEMENT

This Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this Agreement shall terminate and it shall be of no further force and effect on the parties hereto.

13. NOTICE

All notices to be given under this Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA: First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to CityBuild: CityBuild Compliance Manager
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to Developer:

Attn:

If to Contractor:

Attn:

a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, "Contractor Reports") shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage-paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

15. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

16. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. SUCCESSORS

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several.

18. HEADINGS

Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions

19. GOVERNING LAW

This Agreement shall be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

CONTRACTOR:

Date: __________

Signature: ____________________

Name of Authorized Signer: ____________________

Company: ____________________

Address: ____________________

Phone: ____________________

Email: ____________________

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

FIRST SOURCE HIRING PROGRAM
EXHIBIT A-1 - CITYBUILD
CONSTRUCTION CONTRACTS

FORM 1: CITYBUILD WORKFORCE PROJECTION

Instructions

- *The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.*
- *All subcontractors with contracts in excess of $100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.*
- *The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.*
- *It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.*
- *All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.*

Construction Project Name: ______________________

Construction Project Address: ______________________

Projected Start Date: ______________________

Contract Duration: ______ *(calendar days)*

Company Name: ______________________

Company Address: ______________________

Main Contact Name: ______________________

Main Phone Number: ______________________

Main Contact Email : ______________________

Name of Person with Hiring Authority: ______________________

Hiring Authority Phone Number: ______________________

Hiring Authority Email: ______________________

______________________ ______________________ __________
Name of Authorized Representative | Signature of Authorized Representative* | Date

By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Table 1: Briefly summarize your contracted or subcontracted scope of work

Table 2: Complete on the following page

- *List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees.*
- *Total Number of Workers on the Project: The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.*

Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			

Table 3: List your core or existing employees projected to work on the project

- *Please provide information on your projected core or existing employees that will perform work on the jobsite.*
- *"Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.*

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		

FOR CITY USE ONLY: CityBuild Staff: ____________ Approved: Yes ☐ No ☐ Date: ________
Reason: ____________

FORM 3: CITYBUILD JOB NOTICE FORM

INSTRUCTIONS: To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: workforce.development@sfgov.org

2. Contact Workforce Development at 415-701-4848 or by email: local.hire.ordinance@sfgov.org

   OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

> *ATTENTION: Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.*

Section A. Job Notice Information

Trade ____________ # of Journeymen ______ # of Apprentices ______

Start Date ______ Start Time ______ Job Duration ______

Brief description of your scope of work: ____________

Section B. Union Information *(Union contractors complete Section B. Otherwise, leave Section B blank)*

Local # ______ Union Contact Name ____________ Union Phone # ______

Section C. Contractor Information

Project Name: ____________

Jobsite Location: ____________

Contractor: ____________ Prime ☐ Sub ☐

Contractor Address: ____________

Contact Name: ____________ Title: ____________

Office Phone: ______ Cell Phone: ______ Email: ______

Alt. Contact: ____________ Phone #: ____________

Contractor Contact Signature ____________ Date ______

OEWD USE ONLY *Able to Fill* Yes ☐ No ☐

WORFORCE DEVELOPMENT PLAN – ATTACHMENT B

LOCAL HIRING PLAN FOR CONSTRUCTION

1.1 SUMMARY

A. This Attachment B to the Pier 70 28-Acre Site Workforce Development Plan ("**Local Hiring Plan**") governs the obligations of the Project to comply with the City's Local Hiring Policy for Construction pursuant to Chapter 82 of the San Francisco Administrative Code (the "**Policy**"). In the event of any conflict between Administrative Code Chapter 82 and this Attachment, this Attachment shall govern.

B. The provisions of this Local Hiring Plan are hereby incorporated as a material term of the DDA and each Vertical DDA. Under the DDA and each Vertical DDA, the Developer or Vertical Developer thereunder, as applicable, shall require any Contractor performing Construction Work to agree that (i) the Contractor shall comply with all applicable requirements of this Local Hiring Plan; (ii) the provisions of this Local Hiring Plan and the Policy are reasonable and achievable by Contractor and its Subcontractors; and (iii) they have had a full and fair opportunity to review and understand the terms of the Local Hiring Plan.

C. The Office of Economic and Workforce Development (OEWD) is responsible for administering the Local Hiring Plan and will be administering its applicable requirements. For more information on the Policy and its implementation, please visit the OEWD website at: www.workforcedevelopmentsf.org.

D. Capitalized terms not defined herein shall have the meanings ascribed to them in the DDA or the Policy, as applicable.

1.2 DEFINITIONS

A. "Apprentice" means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.

B. "Area Median Income (AMI)" means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

C. "Construction Work" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA or Parcel Lease, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable residential buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement. Work occurring prior to execution of the DDA is not subject to Local Hire.

D. "Covered Project" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

E. "Contractor" means a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs Construction Work on the 28-Acre Site

F. "Disadvantaged Worker" as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).

G. "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of 3 business days' notice.

H. "Local Resident" means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

I. "Non-Covered Project" means any construction projects not covered by the San Francisco Local Hiring Policy.

J. "Project Work". Construction Work performed as part of a Covered Project.

K. "Project Work Hours" means the total onsite work hours worked on a construction contract for a Covered Project by all Apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.

L. "Subcontractor" means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Contractor or another subcontractor to provide services to a Contractor or another subcontractor in fulfillment of the Contractor's or that other subcontractor's obligations arising from a contract for construction work on a Covered Project who performs Construction Work on the 28 Acre site.

M. "Targeted Worker" means any Local Resident or Disadvantaged Worker.

N. "Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

1.3 LOCAL HIRING REQUIREMENTS

A. Total Project Work Hours By Trade. For all construction contracts for Covered Projects, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers. The mandatory participation levels required under this Local Hire Program will be determined by OEWD for each Phase under the DDA, and in no event shall be greater than 30%; however, the Parties acknowledge that Developer intends to require each construction contract for

Covered Projects to meet the mandatory participation levels on an individual contract level.

B. Apprentices: For all construction contracts for Covered Projects, at least 30% of the Project Work Hours performed by Apprentices within each trade is required to be performed by Local Residents, with an aspirational goal of achieving 50%. Hiring preferences shall be given to Apprentices who are referred by the CityBuild program This document also establishes a goal of no less than 25% of Project Work Hours performed by Apprentices within each trade to be performed by Disadvantaged Workers.

C. Out-of-State Workers. For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to OEWD the number of Project Work Hours performed by residents of states other than California.

D. Pre-construction or other Local Hire Meeting. Prior to commencement of Construction Work on Covered Projects, Contractor and its Subcontractors whom have been engaged by contract and identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by Developer or Vertical Developer or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority. Contractor and its Subcontractors who are engaged after the commencement of Construction Work on a Covered Project shall attend a future preconstruction meeting or meetings as mutually agreed by Contractor and OEWD staff.

E. This Local Hiring Plan does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Local Hiring Plan shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

F. Construction Work for Non-Covered Projects will be subject to the First Source Hiring Program for Construction Work in accordance with Section III.C.3 of the Workforce Development Plan.

1.4 CITYBUILD WORKFORCE DEVELOPMENT PROGRAM: EMPLOYMENT NETWORKING SERVICES

A. OEWD administers the CityBuild Program. Subject to any collective bargaining agreements in the building trades and applicable law, CityBuild shall be a primary resource available for Contractor and Subcontractors to meet Contractors' local hiring requirements under this Local Hiring Plan. CityBuild has two main goals:

1. Assist with local hiring requirements under this Local Hiring Plan by connecting Contractor and Subcontractors with qualified journey-level, Apprentice, and pre-Apprentice Local Residents.

2. Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force.

B. Where a Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of this Local Hiring Plan, the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers, including the following:

1. Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.

2. Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All workers networked through CityBuild will qualify as Disadvantaged Workers under this Local Hiring Plan. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is a "Disadvantaged Worker" as defined above.

C. CONDITIONAL WAIVER FROM LOCAL HIRING REQUIREMENTS

A. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the Local Hiring Requirements of Section 1.3 on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.

1. Specialized Trades: OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of this Local Hiring Plan will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the Project Work Hours utilized in each designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade.

2. Credit for Hiring on Non-Covered Projects: Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:

   a. the Targeted Workers are paid the prevailing wages or union scale for work on the Non-Covered Projects; and

   b. such credit hours shall be committed to by the Contractor on future projects to satisfy any short fall the Contractor may have on a Covered Project. Such commitment shall be in writing by the Contractor, shall extend for a period of time negotiated between the contractor and OEWD, and shall commit to satisfying any assessed penalties should Contractor fail to achieve the required credit hours.

3. Sponsoring Apprentices: Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new Apprentices in trades in which noncompliance is likely and retaining those Apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California

Department of Industrial Relations that the new Apprentices are registered and active Apprentices. Contractor will be required to write a sponsorship letter on behalf of the identified candidate to the appropriate Local Union and will make the necessary arrangements with the Union to hire the candidate as soon as s/he is indentured.

4. Direct Entry Agreements: OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with the California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with this Local Hiring Plan by Contractor or its Subcontractors hiring and retaining Apprentices who are enrolled through such direct entry agreements. Contractor may also utilize OEWD-approved organizations with direct entry agreements with Local Unions, including District 10 based organizations to hire and retain Targeted Workers. To the extent that Contractor or its Subcontractors have hired Apprentices or Targeted Workers under a direct entry agreement entered into by OEWD or reasonably approved by OEWD, OEWD will not assess penalties for non-compliance with this Local Hiring Plan.

5. Corrective Actions: Should local employment conditions be such that adequate Targeted Workers for a craft, or crafts, are not available to meet the requirements and Contractor can document their efforts to achieve the requirements through the mechanisms and processes in this document, a corrective action plan must be negotiated between Contractor and OEWD.

1.5 LOCAL HIRING FORMS

A. Utilizing the City's online Project Reporting System, Contractors for Covered Projects shall submit the following forms, as applicable, to the Contracting City Agency and OEWD:

1. Form 1: Local Hiring Workforce Projection. OEWD Form 1 (Local Hiring Workforce Projection), a copy of which is attached hereto, shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

2. Form 2: Local Hiring Plan. For Covered Projects estimated to cost more than $1,000,000, Contractor shall prepare and submit to Contracting City Agency and OEWD for approval a Local Hiring Plan for the project using OEWD Form 2, a copy of which is attached hereto. This Form 2 shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

3. Job Notifications. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.

4. Form 4: Conditional Waivers. If a Contractor or a Subcontractor believes the local hiring requirements cannot be met, it will submit OEWD Form 4 (Conditional Waiver), a copy of which is attached hereto, as more particularly described in Articles 1.4 and 1.5 above.

1.6 ENFORCEMENT, RECORD KEEPING, NONCOMPLIANCE AND PENALTIES

A. Subcontractor Compliance. Each Contractor and Subcontractor shall ensure that all Subcontractors agree to comply with applicable requirements of this document. All Subcontractors agree as a term of participation on the Project that the City shall have third party beneficiary rights under all contracts under which Subcontractors are performing Project Work. Such third party beneficiary rights shall be limited to the right to enforce the requirements of this Local Hiring Plan directly against the Subcontractors. All Subcontractors on the Project shall be responsible for complying with the recordkeeping and reporting requirements set forth in this Local Hiring Plan. Subcontractors with work in excess of the of $600,000 shall be responsible for ensuring compliance with the Local Hiring Requirements set forth in Section 1.3 of this Local Hiring Plan based on Project Work Hours performed under their Subcontracts, including Project Work Hours performed by lower tier Subcontractors with work less than the Threshold Amount.

B. Reporting. Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and will monitor compliance with this Local Hiring Plan electronically.

C. Recordkeeping. Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of Construction Work, certified payroll and basic records. including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on a Covered Project.

1. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the Apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a Local Resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the Covered Project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method) as allowed by law.

2. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.

3. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the OEWD.

D. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Contractor and Subcontractors working on a Covered Project with requirements of this Local Hiring Plan. Contractor shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of Covered Projects. Contractor and all Subcontractors shall also allow representatives of OEWD to have access to employees of the Contractor and Subcontractors and the records required to be maintained under this document.

E. Noncompliance and Penalties. Failure of Contractor and/or its Subcontractors to comply with the requirements of this document and the obligations set forth in this Local Hiring Plan may subject Contractor to the consequences of noncompliance, including but not

limited to the assessment of penalties, but only if City determines that the failure to comply results from willful actions of Contractor and/or its Subcontractors, and not by reason of unavailability of sufficient qualified Local Residents and Disadvantaged Workers to meet the goals required hereunder. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled.

1. **Penalties Amount.** If any Contractor or Subcontractor fails to satisfy the Local Hiring Requirements of this Local Hiring Plan applicable to Project Work Hours performed by Local Residents, and the applicable Contractor or Subcontractor is unable to provide evidence reasonably satisfactory to the City that such failure arose solely due to unavailability of qualified Local Residents despite Contractors or Subcontractors good faith efforts in accordance with this Local Hiring Progam, then the Contractor, and in the case of any Subcontractor so failing, and Subcontractor shall jointly and severally forfeit to the City, an amount equal to the Journeyman or Apprentice prevailing wage rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under subsection 6.22(e)(3) of the Administrative Code, for the primary trade used by the Contractor or Subcontractor on the Covered Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. The assessment of penalties under this subsection shall not preclude the City from exercising any other rights or remedies to which it is entitled.

2. **Assessment of Penalties.** OEWD shall determine whether a Contractor and/or any Subcontractor has failed to comply with the Local Hire Requirement. If after conducting an investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of penalties to the Contractor and/or any Subcontractor that sets forth the basis of the assessment and orders payment of penalties in the amounts equal to the Journeyman or Apprentice prevailing wage rates, as applicable, for the primary trade used by the Contractor or Subcontractor on the Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. Assessment of penalties under this subsection shall be made only upon an investigation by OEWD and upon written notice to the Contractor or Subcontractor identifying the grounds for the penalty and providing the Contractor or Subcontractor with the opportunity to respond pursuant to the recourse procedures prescribed in this Local Hiring Plan.

3. **Recourse Procedure.** If the Contractor or Subcontractor disagrees with the assessment of penalties, then the following procedure applies:

   a. The Contractor or Subcontractor may request a hearing in writing within 15 days of the date of the final notification of assessment. The request shall be directed to the City Controller. Failure by the Contractor or Subcontractor to submit a timely, written request for a hearing shall constitute concession to the assessment and the forfeiture shall be deemed final upon expiration of the 15-day period. The Contractor or Subcontractor must exhaust this administrative remedy prior to commencing further legal action.

   b. Within 15 days of receiving a proper request, the Controller shall appoint a hearing officer with knowledge and not less than five years' experience in

labor law, and shall so advise the enforcing official and the Contractor or Subcontractor, and/or their respective counsel or authorized representative.

c. The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days of such notification unless all parties agree to an extended period.

d. Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the hearing officer shall consist of findings and a determination. The hearing officer's findings and determination shall be final.

e. The Contractor or Subcontractor may appeal a final determination under this by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure Section 1084 *et seq.*, as applicable and as may be amended from time to time.

1.8 COLLECTIVE BARGAINING AGREEMENT

Nothing in this Local Hiring Plan shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (Collective Bargaining Agreements"). In the event of a conflict between this Local Hiring Plan and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Local Hiring Plan.

END OF DOCUMENT

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 1
CONSTRUCTION CONTRACTS

FORM 1: LOCAL HIRING WORKFORCE PROJECTION

Contractor: ______________ **Project Name:** ______________ **Contract #:** ________

The Contractor must complete and submit this *Local Hiring Workforce Projection* (Form 1) prior to the start of construction and quarterly until all subcontracting is complete. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount.

Will you be able to meet the mandatory Local Hiring Requirements?

☐ **YES (*Please provide information for all contractors performing construction work in Table 1 below.)***

☐ **NO (*Please complete Table 1 below and Form 4: Conditional Waivers.)***

INSTRUCTIONS FOR COMPLETING TABLE 1:

1. Please organize the contractors' information based on their Trade Craft work.
2. For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (*i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.*)
3. If you anticipate utilizing Apprentices on this project, please note the requirement that 30% of Apprentice hours must be performed by San Francisco residents.
4. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

TABLE 1: WORKFORCE PROJECTION

Trade Craft	Contractor *List contractors by Trade Craft*		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
Example: *Laborer*	*Contractor X*	***Journey***	800	250	31%
		Apprentice	200	100	50%
Example: *Laborer*	*Contractor Y*	***Journey***	500	100	20%
		Apprentice	0	0	0
Example:	**TOTAL LABORER**	***Journey***	1300	350	**27%**
		Apprentice	200	100	**50%**
Example:		**TOTAL**	**1500**	**450**	**30%**
		Journey			
		Apprentice			
		Journey			
		Apprentice			
		Journey			
		Apprentice			

DISCLAIMER: *If the Total Work Hours for a Trade Craft are less than 5% of the Total Project Work Hours, the Trade Craft is exempt from the Mandatory Requirement. Subsequently, if the Trade Craft exceeds 5% of the Total Project Work Hours at any time during the project, the Trade Craft is subject to the Mandatory Requirement.*

Name of Authorized Representative	Signature	Date	Phone	Email

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 2
CONSTRUCTION CONTRACTS

FORM 2: LOCAL HIRING PLAN

Contractor: ______________ **Project Name:** ______________ **Contract #:** ________

If the Estimate for this Project exceeds **$1 million**, then Contractor must submit a *Local Hiring Plan* using this Form 2 through the City's Project Reporting System. Form 2 shall be initially submitted prior to the start of construction and include all known subcontractors. Contractor shall update this Form 2 quarterly as subcontractors are identified and shall continue with updates until all subcontracting is complete. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved *Conditional Waivers* (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.

INSTRUCTIONS:

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 30% of apprentice hours must be performed by San Francisco residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
Example: *Laborer*	*1500*	*450*	*30%*	*200*	100	50%

List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Start Date	Number of Working Days	*Contractor Signature
Contractor X Joe Smith	250	100	350	3/25/13	60	*Joe Smith*
Contractor Y Michael Lee	100	0	100	5/25/13	30	*Michael Lee*

****We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.***

City Use Only	
OEWD Approval	☐ Yes ☐ No
Signature and Date:	

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 4
CONSTRUCTION CONTRACTS

FORM 4: CONDITIONAL WAVIERS

Contractor: ____________ **Project Name:** ____________ **Contract #:** ________

Upon approval from OEWD, Contractors and Subcontractors may use one or more of the following pipeline and retention compliance mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by OEWD. If applicable, each subcontractor must submit their individual Waiver request to OEWD and copy their Prime Contractor. This form can be submitted at any time.

TRADE WAIVER INFORMATION: Please provide information on the Trades you are requesting Waivers for:

Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours	Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours
1.			3.		
2.			4.		

Please check any of the following Conditional Waivers and complete the appropriate boxes for approval:

☐ **1. SPECIALIZED TRADES** ☐ **2. SPONSORING APPRENTICES** ☐ **3. CREDIT FOR NON-COVERED PROJECTS**

1. SPECIALIZED TRADES: Will your firm be requesting Conditional Waivers for "Specialized Trades" designated by OEWD and listed on OEWD's website or project-specific Specialized Trades approved by OEWD during the bid period? ☐ Yes ☐ No

Please CHECK off the following Specialized Trades you are claiming for Condition Waiver:

☐ MARINE PILE DRIVER ☐ HELICOPTER, CRANE, OR DERRICK BARGE OPERATOR ☐ IRONWORKER CONNECTOR
☐ STAINLESS STEEL WELDER ☐ TUNNEL OPERATING ENGINEER ☐ ELECTRICAL UTILITY LINEMAN ☐ MILLWRIGHT
☐ TRADE CRAFT IS LESS THAN 5% OF TOTAL WORK HOURS. *LIST:*

a. List OEWD-approved project-specific Specialized Trades approved during the bid period:

OEWD APPROVAL: ☐ **Yes** ☐ **No** **OEWD Signature:**

2. SPONSORING APPRENTICES: Will you be able to work with OEWD to sponsor an OEWD-specified number of new apprentices in the agreeable trades into California Department of Industrial Relations' Division of Apprenticeship Standards approved apprenticeship programs? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS:

Construction Trade	Est. # of Sponsor Positions	Union (Yes / No)	If Yes, Local #	Est. Start Date	Est Duration of Working Days	Est Total Work Hours Performed
		Y☐ N☐				
		Y☐ N☐				

OEWD APPROVAL: ☐ **Yes** ☐ **No** **OEWD Signature:**

3. CREDIT for HIRING on NON-COVERED PROJECTS: If your firm cannot meet the mandatory local hiring requirement, will you be requesting credit for hiring Targeted Workers on Non-covered Projects? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS:

Labor Trade, Position, or Title		Est. # of Off-site Hires	Est Total Work Hours Performed	Offsite Project Name	Project Address
	Journey				
	Apprentice				

OEWD APPROVAL: ☐ **Yes** ☐ **No** **OEWD Signature:**

WORKFORCE DEVELOPMENT PLAN

ATTACHMENT C - LBE UTILIZATION PLAN

1. Purpose and Scope. This Attachment C ("**LBE Utilization Plan**") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Workforce Plan or Section 14B.20 as applicable. The Port and Developer will seek to, whenever practicable, conduct outreach to contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities such as the 94107, 94124, and 94134 zip codes. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.

2. Roles of Parties. In connection with the design and construction phases of all Construction Work (as defined in the Workforce Plan), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs"). Developer and each Vertical Developer shall participate in a local business enterprise program, and the City's Contract Monitoring Division will serve the roles as set forth below.

3. Definitions. For purposes of this Attachment, the definitions shall be as follows:

a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.

b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Contracting Party as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Contracting Party.

c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of an LBE Improvement.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of an LBE Improvement.

e. "Contracting Party" means a Project Sponsor, Contractor or Consultant retained to work on LBE Improvements, as the case may be.

f. "Contractor" shall mean a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs construction work on an LBE Improvement.

g. "Follow-on Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to an approved building permit or site permit/addenda issued after the building permit or site permit/addenda for the Initial Tenant Improvements.

h. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.

i. "Initial Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to the first building permit or site permit/addenda issued for such spaces after completion of building core and shell.

j. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.

k. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

l. "LBE Improvements" means, as applicable, (a) all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA and (b) Workforce Buildings.

m. "Project Sponsor" shall mean the Developer of Horizontal Improvements or the Vertical Developer under a Vertical DDA.

n. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for an LBE Improvement.

o. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for Construction Work.

p. "Workforce Buildings" means the following: (i) residential buildings, including associated residential units, common space, amenities, parking and back of house construction; (ii) commercial office, retail, parking buildings core & shell; (iii) tenant improvement for all commercial spaces in residential or commercial buildings (office, retail) which are 15,000 square feet (per square footage on building permit application) and above; and (iv) all construction related to standalone affordable housing buildings. Workforce Buildings shall expressly exclude: (i) residential owner-contracted improvements in for-sale residential units; (ii) tenant improvements for the Arts Building (E4), including core and shell and tenant improvements; and (iii) tenant improvements related to PDR spaces. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such

improvements. Such association will consider, in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.

4. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Plan and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of 17% of the total cost of all Contracts for an LBE Improvement awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A); Follow-on Tenant Improvements and services are not included in the numerical goal. Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation requirement, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. Where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, that there are not sufficient qualified Small and Micro-LBEs available, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro- LBEs, and for SBA-LBEs.

6. Project Sponsor Obligations. For each LBE Improvement, the Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns. The LBE Liaison shall be a LBE Consultant with the experience in and responsible for making recommendations on how to maximize engagement of local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.
The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. For the term of the DDA or VDDA as applicable, at least once per year, each Project Sponsor and the Port shall hold a public workshop for applicable contractor communities to publicize anticipated contracting opportunities for LBE Improvements for the succeeding year, which workshops may be held independently or in conjunction with each other; provided, that the Port's obligations hereunder shall be limited to contracting opportunities relating to operations and maintenance of publicly-owned improvements within the 28-Acre Site. Each Project Sponsor will use good faith efforts to hire Small, Micro or SBA-LBEs for ongoing service contracts including janitorial, security and parking management contracts and advertise these contracting opportunities with the CMD except to the extent impractical or infeasible (e.g., a parking management contract cannot be broken down to allow two parking operators). Each project sponsor agrees to utilize a "subguard" policy or other means (i.e., OCIP or CCIP) to provide bonding capacity or assistance for LBEs working on the Project at the developer or contractor's option, should the firm be required to bond.

If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.

b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant, in their sole discretion, may divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.

c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant may advertise for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (http://mission.sfgov.org/OCABidPublication) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As Contractor deems necessary, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals for LBEs to ask questions about the selection process and technical specifications/requirements.

d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.

e. Public Solicitation. The Project Sponsor or its prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.

f. Outreach and Other Assistance. The Project Sponsor or its prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract

information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

g. Contacts. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.

h. Good Faith/Nondiscrimination. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).

i. Incorporation into contract provisions. Project Sponsor shall include in Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including the overall LBE participation goal and any LBE percentage that may be required under such Contract (Note: Developer/applicable tenants shall follow this programs Good Faith Efforts for Follow-on Tenant Improvements and services, but such work is not subject to the numerical LBE goal).

j. Monitoring. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

k. Maintain Records and Cooperation. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;

l. Quarterly and Annual Reports. During construction, the LBE Liaison(s) shall prepare a quarterly and annual report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and

m. Meet and Confer. Attend the meet and confer process described in Section 10.

8. <u>Good Faith Outreach</u>. 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. <u>CMD Obligations</u>. 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.

VERTICAL DDA EXHIBIT H
PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Recorder's Stamp

APN: [____________________]

PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

This PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Partial Release**"), dated for reference purposes only as of ____________, 20____ (the "**Effective Date**"), is made by the City and County of San Francisco, a municipal corporation (the "**City**"), acting by and through the San Francisco Port Commission (the "**Port**" or the "**Port Commission**"), and FC Pier 70, LLC, a Delaware limited liability company ("**Master Developer**") with reference to the following facts and circumstances:

A. Master Developer and the Port entered into that certain Disposition and Development Agreement (28-Acre Site Project), dated for reference purposes as of [____________], 2018 , recorded in the Official Records of the City and County of San Francisco ("**Official Records**") on [____________] as Document No. [____________] (as amended, the "**DDA**").

B. Port has entered into a Vertical Disposition and Development Agreement dated as of _________, 20____ ("**Vertical DDA**") with [______________________], a [______________] ("**Vertical Developer**"), pursuant to which upon satisfaction of certain conditions, Port will convey to Vertical Developer, a Development Parcel consisting of [________________________], as more particularly described in Exhibit A and shown on the map attached hereto as Exhibit A-2 ("**Development Parcel**"). The Development Parcel is currently subject to the DDA.

C. In order for Port to deliver the Development Parcel at Close of Escrow free of Master Developer's interest in the Development Parcel under the DDA, the Parties must release the Development Parcel from the DDA and record this Partial Release.

VERTICAL DDA EXHIBIT H
PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

NOW THEREFORE, in consideration of the foregoing facts, understandings and agreements, the Parties agree as follows:

DDA RELEASE

1. As of the Effective Date, the Development Parcel is hereby released from the DDA.

2. Other than the release of the Development Parcel from the DDA, all other terms and conditions of the DDA remain unchanged.

[Signature appears on following page]

VERTICAL DDA EXHIBIT H
PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

Master Developer and the Port have executed this Partial Release as of the last date written below.

MASTER DEVELOPER:

FC PIER 70, LLC, a Delaware limited liability company

By: ____________________________
Name: __________________________
Its: ____________________________

Date: ___________________________

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Port Commission

By: ____________________________
Elaine Forbes
Port Director

Date: ___________________________

Authorized by the Port Resolution No. 17-43 and Board Resolution No. 401-17

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: ____________________________
Name ______________
Deputy City Attorney

[Signature Page to Release]

VERTICAL DDA EXHIBIT H
PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

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

State of California)
County of _______________)

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

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

WITNESS my hand and official seal.

Signature __________________________ (Seal)

VERTICAL DDA EXHIBIT H
PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

EXHIBIT A-1

Development Parcel

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

[________________________________]

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383 **RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:**	

Recorder's Stamp

APN:

PARTIAL RELEASE OF MASTER LEASE

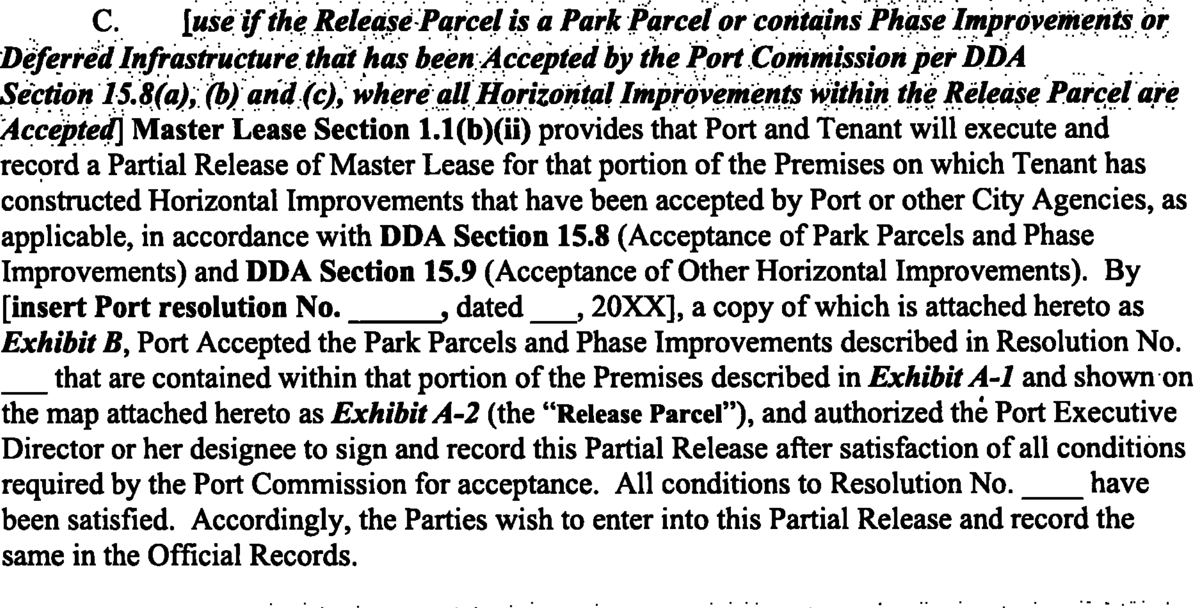
This PARTIAL RELEASE OF MASTER LEASE (this "**Partial Release**"), dated for reference purposes only as of _______________, 20____ (the "**Reference Date**"), is made by the CITY AND COUNTY OF SAN FRANCISCO (the "**City**"), operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**"), as landlord, and FC PIER 70, LLC, a Delaware limited liability company ("**Tenant**" or "**Master Developer**"), with reference to the following facts and circumstances:

A. Tenant and the Port entered into that certain Master Lease, dated for reference purposes as of [____________] (as amended and as may be further amended from time to time, the "**Master Lease**"). In accordance with [Section 43.10] of the Master Lease, a Memorandum of Lease was recorded in the Official Records of the City and County of San Francisco ("**Official Records**") on [____________] as Document No. [__________]. All capitalized terms used but not defined herein shall have the meanings assigned to them in the Master Lease.

B. Tenant and Port also entered into that certain Development and Disposition Agreement, dated for reference purposes as of [____________] (as amended and as may be further amended from time to time, the "**DDA**") pursuant to which Tenant, as the master developer of the 28-Acre Site, will perform certain obligations, including the construction of Horizontal Improvements. The DDA was recorded in the Official Records on [____________] as Document No. [___________]. Tenant, as master developer of the 28-Acre Site, is sometimes referred to as the Master Developer in the Master Lease.

C. ***[add for Development Parcel conveyances only]*** Port and [________________________], a [________________] ("**Vertical Developer**") entered into that certain Vertical Disposition and Development Agreement dated for reference purposes as of [____________] (as amended from time to time, the "**Vertical DDA**") for the Development Parcel more particularly described in ***Exhibit A-1*** and shown on the map attached hereto as

Exhibit A-2 (the "**Development Parcel**"). Port is obligated to convey the Development Parcel to the Vertical Developer upon satisfaction or waiver of various conditions, all of which have either been satisfied by Vertical Developer or waived by Port as of the date hereof. In order for Port to convey the Development Parcel to the Vertical Developer, the Development Parcel must first be released from the Premises. **Master Lease Section 1.1(b)(i)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises consisting of the Development Parcel in order to effectuate the Vertical DDA applicable to such Development Parcel. The Parties now desire to release the Development Parcel from the Premises (the "**Release Parcel**"). Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.



C. [***use if the Release Parcel is a Park Parcel or contains Phase Improvements or Deferred Infrastructure that has been Accepted by the Port Commission per DDA Section 15.8(a), (b) and (c), where all Horizontal Improvements within the Release Parcel are Accepted***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with **DDA Section 15.8** (Acceptance of Park Parcels and Phase Improvements) and **DDA Section 15.9** (Acceptance of Other Horizontal Improvements). By [**insert Port resolution No. ______, dated** ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, Port Accepted the Park Parcels and Phase Improvements described in Resolution No. ___ that are contained within that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"), and authorized the Port Executive Director or her designee to sign and record this Partial Release after satisfaction of all conditions required by the Port Commission for acceptance. All conditions to Resolution No. ____ have been satisfied. Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.

C. [***use if the Release Parcel is a Park Parcel or contains Phase Improvements or Deferred Infrastructure that has been Accepted by the Port Commission but the Release Parcel also contains other Horizontal Improvements that have not yet been Accepted per DDA 15.8(d)***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with **DDA Section 15.8** (Acceptance of Park Parcels and Phase Improvements) and **DDA Section 15.9** (Acceptance of Other Horizontal Improvements). By [**insert Port resolution No. ______, dated** ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, Port Accepted the Park Parcels and/or Phase Improvements described in Resolution No. ___ (collectively, the "**Port Acceptance Items**"). The Port Acceptance Items affect that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"). The Release Parcel includes sub-surface improvements for which the City has not yet accepted ownership[, as more particularly described in Port Resolution No. ____]. Tenant will continue to own such sub-surface improvements until they are accepted by the City ("**Unreleased Portion**"). The Unreleased Portion is described in ***Exhibit A-3*** and shown on the map attached hereto as ***Exhibit A-2***. As required under ***DDA Section 15.8(d)***, the Port

Commission conditioned its Acceptance of the Port Acceptance Items on the Tenant entering into an agreement under which Port grants to Tenant a right-of-entry upon the Release Parcel for maintenance, repair and inspection purposes and Tenant retains ownership and liability for the sub-surface improvements until such time as the sub-surface improvements are formally accepted by the City. Such condition having been satisfied, the Port Executive Director or her designee is authorized by Resolution No. ______ to sign and record this Partial Release.

C. [*use if all Horizontal Improvements within the Release Parcel have been Accepted by the Board of Supervisors per DDA Section 15.9. There are no other Horizontal Improvements within the Release Parcel that need Acceptance*] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with **DDA Section 15.8** (Acceptance of Park Parcels and Phase Improvements) and **DDA Section 15.9** (Acceptance of Other Horizontal Improvements). By [**insert Board of Supervisors Motion No.** ______, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, the City Accepted all Horizontal Improvements [**add if applicable: including Utility Infrastructure**] that are described in Motion No. ___ and contained within that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"). Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.

C. [*use if the Release Parcel contains Horizontal Improvements that have been Accepted by the Board of Supervisors per DDA Section 15.9 but the Release Parcel also contains other Horizontal Improvements that have not yet been Accepted*] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with ***DDA Section 15.8*** (Acceptance of Park Parcels and Phase Improvements) and ***DDA Section 15.9*** (Acceptance of Other Horizontal Improvements). By [**insert Board of Supervisors Motion No.** ______, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, the City Accepted certain Horizontal Improvements [**add if applicable: including Utility Infrastructure**] that is described in Motion No. ___ and contained within that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"). The Release Parcel includes Horizontal Improvements for which the City has not yet accepted ownership. Tenant will continue to own such Horizontal Improvements until they are accepted by the City ("**Unreleased Portion**"). The Unreleased Portion is described in ***Exhibit A-3*** and shown on the map attached hereto as ***Exhibit A-2***. As a condition to the Acceptance, Motion No. ______ required Tenant to provide the applicable City Agency with access rights in accordance with the Master Lease, and warranties covering the accepted improvements for a period of time as specified in the conditions to acceptance and thereafter, under the applicable Public Improvement Agreement. The Parties wish to enter into this Partial Release and record the same in the Official Records.

D. By recording this Partial Release, the Parties seek to notify third parties that the Premises described in the Master Lease will be [further] adjusted by the release of the Release Parcel [less the Unreleased Portion].

NOW THEREFORE, in consideration of the foregoing facts, understandings and agreements, the Parties agree as follows:

AGREEMENT

1. In accordance with Section [***1.1(b)(i) (Development Parcels)***] or [***1.1(b)(ii) (Horizontal Improvement Parcels)***] of the Master Lease, Port and Tenant hereby release as of the date hereof, the Release Parcel [less the Unreleased Portion] from the Master Lease and as of the date hereof, the "**Premises**" under and as defined in the Master Lease will be adjusted to exclude the Release Parcel [other than the Unreleased Portion that remains a part of the Premises].

2. Other than the adjustment of the Premises as set forth in this Partial Release, all other terms and conditions of the Master Lease remain unchanged.

[Signature appears on following page]

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

IN WITNESS WHEREOF, Port and Tenant have executed this Release as of the day and year first above written.

Tenant

FC PIER 70, LLC, a Delaware limited liability company

By: ______________________________
Name: ______________________________
Title: ______________________________

Port

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: ______________________________

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: ______________________
Name: ______________________
Title: ______________________

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

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

State of California)
County of ______________)

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

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

WITNESS my hand and official seal.

Signature ____________________________ (Seal)

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

EXHIBIT A-1

Legal Description of Release Parcel

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

[____]

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

EXHIBIT A-2

Site Map of Release Parcel [and Unreleased Portion]

[see attached]

[EXHIBIT A-3]

Legal Description of Unreleased Portion

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

[____]

MEMORANDUM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

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

APN:
Lot: ____________ Block: ___________

[Include any required recording cover sheet]

MEMORANDUM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Memorandum**") dated for reference purposes as of [____________], 201[_] is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the "**Port**"), and [_______________], a [______________] (the "**Developer**").

1. Agreement. Port and Developer have entered into a Vertical Disposition and Development Agreement dated as of [_______________], 201[_] (the "**Agreement**"), under which (a) upon satisfaction or waiver of the conditions described in the Agreement, Port agrees to: **[lease][sell]** the Premises in accordance with the terms of the Agreement (the "**Premises**"); (b) upon satisfaction or waiver of the conditions described in the Agreement, Developer agrees to **[lease][purchase]** the Premises from Port; and (c) [**Add the following for affiliate deals only**: if Developer elects to develop the Vertical Project,] and governs the development of the Vertical Project. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Agreement.

2. Term: The term of the Agreement shall be from the Effective Date until recording of the Certificate of Completion, unless this Agreement is earlier terminated in accordance with its provisions (the "**Agreement Term**"). If Close of Escrow does not occur by the Target Closing Date (or if applicable, the Extended Closing Date) as such date and time may be

extended with the prior written approval of both Port and Vertical Developer, the Agreement shall automatically terminate. Recording of the Certificate of Completion by the Port will automatically terminate the Agreement, and after such recording, other than the terms and provisions that expressly survive the expiration or earlier termination of the Agreement, the Agreement will have no further force or effect.

3. Repurchase Right. If Developer fails to commence construction of the Vertical Project within forty- two (42) months following the date the Quitclaim Deed is recorded in the Recorder's Office of the City, then either Master Developer or Port may repurchase the Property, including all improvements thereon, in accordance with Section 15.3 of the Agreement.

4. Notice. The parties have executed and recorded this Memorandum to give notice of the Agreement and their respective rights and obligations under the Agreement to all third parties. The Agreement is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Agreement, the Agreement shall control.

5. Counterparts. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF the parties hereto have caused this Memorandum of Lease Disposition and Development Agreement to be executed by their duly appointed representatives as of the date first above written.

DEVELOPER: [__________], a [__________________]

By: ______________________________

PORT: **CITY AND COUNTY OF SAN FRANCISCO,** a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: ______________________________
Name: ____________________________
Title: _____________________________

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

Port Resolution No. 17 – 43 (September 26, 2017)
Board of Supervisors Resolution No. 401-17

By: ______________________________
Name: ___________________________,
Deputy City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF ____________

On ________________ before me, ______________________________ personally
(insert name and title of the officer)
appeared ____
____
____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_________________________________ (Seal)
Signature

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF ____________

On ________________ before me, ______________________________ personally
(insert name and title of the officer)
appeared ____
____
____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_________________________________ (Seal)
Signature

VDDA EXHIBIT K

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
MITIGATION MEASURES FOR THE PIER 70 MIXED-USE DISTRICT PROJECT					
Cultural Resources (Archaeological Resources) Mitigation Measures					
M-CR-1a: Archeological Testing, Monitoring, Data Recovery and Reporting Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources. The project sponsors shall retain the services of an archeological consultant from rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsors shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the	Project sponsors[2] to retain qualified professional archaeologist from the pool of archaeological consultants maintained by the Planning Department. The archaeological consultant shall undertake an archaeological testing program as specified herein. Project sponsors,	Prior to the issuance of site permits, submittal of all plans and reports for approval by the ERO.	Archaeological consultant's work shall be conducted in accordance with this measure at the direction of the ERO.	Considered complete when project sponsor retains a qualified professional archaeological consultant and archeological consultant has approved scope by the ERO for the archeological testing program	Planning Department

[1] Both the City and the Port have jurisdiction over portions of the Project Site. This column identifies the agency or agencies with monitoring responsibility for each mitigation and improvement measure. The 28-Acre Site and 20th/Illinois Parcels are located within the Port's building permit jurisdiction. The Hoedown Yard parcel is located within the San Francisco Department of Building Inspection (DBI).

[2] Note: For purposes of this MMRP, unless otherwise indicated, the term "project sponsor" shall mean the party (*i.e.*, the Developer under the DDA, a Vertical Developer (as defined in the DDA) or Port, as applicable, and their respective contractors and agents) that is responsible under the Project documents for construction of the improvements to which the Mitigation Measure applies, or otherwise assuming responsibility for implementation of the mitigation measure.

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in State CEQA Guidelines Section 15064.5 (a) and (c). <u>Consultation with Descendant Communities</u> On discovery of an archeological site associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to consult with the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.	archaeological consultant shall contact the ERO and descendant group representative upon discovery of an archaeological site associated with descendant Native Americans or the Overseas Chinese. The representative of the descendant group shall be given the opportunity to monitor archaeological field investigations on the site and consult with the ERO regarding appropriate archaeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archaeological site.	For the duration of soil-disturbing activities.	Archaeological Consultant shall prepare a Final Archaeological Resources Report in consultation with the ERO (per below). A copy of this report shall be provided to the ERO and the representative of the descendant group.	Considered complete upon submittal of Final Archaeological Resources Report.	
<u>Archeological Testing Program</u>	<u>Development of</u>	Prior to any	Archaeological	Considered	Planning

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

MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the Proposed Project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.	ATP: Project sponsors and archaeological consultant in consultation with the ERO.	excavation, site preparation or construction, and prior to testing, an ATP for a defined geographic area and/or specified construction activities is to be submitted to and approved by the ERO. A single ATP or multiple ATPs may be produced to address project phasing.	consultant to undertake ATP in consultation with ERO.	complete with approval of the ATP by the ERO and on finding by the ERO that the ATP is implemented.	Department
At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.	Archeological Testing Report: Project sponsors and archaeological consultant in consultation with the ERO.	At the completion of each archaeological testing program.	Archaeological consultant to submit results of testing, and in consultation with ERO, determine whether additional measures are warranted. If significant archaeological	Considered complete on submittal to ERO of report(s) on ATP findings.	

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			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.		
<u>Archeological Monitoring Program</u> If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented, the AMP would minimally include the following provisions: • The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the AMP prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. A single AMP or multiple AMPs may be produced to address project phasing. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring	Project sponsors and archaeological consultant at the direction of the ERO.	The archaeological consultant, project sponsors, and ERO shall meet prior to the commencement of soil-disturbing activities for a defined geographic area and/or specified construction	If required, archaeological consultant to prepare the AMP in consultation with the ERO.	Considered complete on approval of AMP(s) by ERO; submittal of report regarding findings of AMP(s); and finding by ERO that AMP(s) is implemented.	Planning Department

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because of the risk these activities pose to potential archeological resources and to their depositional context. The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource; • The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; • The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis; If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, pile driving activity that may affect the archeological resource shall be suspended until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the		activities. The ERO in consultation with the archaeological consultant shall determine what archaeological monitoring is necessary. A single AMP or multiple AMPs may be produced to address project phasing.			

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discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible. Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.					
Archeological Data Recovery Program If the ERO, in consultation with the archeological consultant, determines that an archeological data recovery programs shall be implemented based on the presence of a significant resource, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, shall be limited to the portions of the historical property that could be adversely affected by the Proposed Project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.	Project sponsors and archaeological consultant at the direction of the ERO.	Upon determination by the ERO that an ADRP is required.A single ADRP or multiple ADRPs may be produced to address project phasing.	If required, archaeological consultant to prepare an ADRP(s) in consultation with the ERO.	Considered complete on submittal of ADRP(s) to ERO.	

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The scope of the ADRP shall include the following elements: • *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations. • *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures. • *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies. • *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. • *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. • *Final Report.* Description of proposed report format and distribution of results. • *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.					
<u>Human Remains and Associated or Unassociated Funerary Objects</u> The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the coroner of the City and County of San Francisco and in the event of the coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project	Project sponsors and archaeological consultant, in consultation with the San Francisco Coroner, NAHC, ERO, and MLD.	In the event human remains and/or funerary objects are encountered.	Archaeological consultant/ archaeological monitor/project sponsors or contractor to contact San Francisco County Coroner and ERO.	Ongoing during soils disturbing activity. Considered complete on notification of the San Francisco County Coroner	Planning Department

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sponsors, ERO, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (State CEQA Guidelines Section 15064.5(d)). The agreement shall take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such an agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.			Implement regulatory requirements, if applicable, regarding discovery of Native American human remains and associated/unassociated funerary objects. Contact archaeological consultant and ERO.	and NAHC, if necessary.	
Final Archeological Resources Report The archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report. The FARR may be submitted at the conclusion of all construction activities associated with the Proposed Project or on a parcel-by-parcel basis. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high	Project sponsors and archaeological consultant at the direction of the ERO. The ERO shall provide to the archaeological consultant(s) preparing the FARR reports and relevant data obtained through implementation of this Mitigation Measure M-CR-1a.	For Horizontal Developer-prior to determination of substantial completion of infrastructure at each sub-phase For Vertical Developer-prior to issuance of Certificate of Temporary or Final Occupancy, whichever occurs first	If applicable, archaeological consultant to submit a Draft and final FARR to ERO based on reports and relevant data provided by the ERO Archaeological consultant to distribute FARR.	Considered complete on submittal of FARR and approval by ERO. Considered complete when archaeological consultant provides written certification to the ERO that the required FARR	Planning Department

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public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.		If applicable, upon approval of the FARR by the ERO.		distribution has been completed.	
M-CR-1b: Interpretation Based on a reasonable presumption that archeological resources may be present within the project site, and to the extent that the potential significance of some such resources is premised on CRHR Criteria 1 (Events), 2 (Persons), and/or 3 (Design/Construction), the following measure shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources if significant archeological resources are discovered. The project sponsors shall implement an approved program for interpretation of significant archeological resources. The interpretive program may be combined with the program required under Mitigation Measure M-CR-4b: Public Interpretation. The project sponsors shall retain the services of a qualified archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist having expertise in California urban historical and marine archeology. The archeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. The particular program for interpretation of artifacts that are encountered within the project site will depend upon the results of the data recovery program and will be the subject of continued discussion between the ERO, consulting archeologist, and the project sponsors. Such a program may include, but is not limited to, any of the following (as outlined in the ARDTP): surface commemoration of the original location of resources; display of resources and associated artifacts (which may offer an underground view to the public); display of interpretive materials such as graphics, photographs, video, models, and public art; and academic and popular publication of the results of the data recovery. The interpretive program shall include an on-site	Project sponsors and archaeological consultant at the direction of the ERO.	Prior to issuance of final certificate of occupancy	Archaeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. All plans and recommendations for interpretation by the archaeological consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until deemed final by the ERO. The ERO to approve final interpretation program. Project sponsors to implement an approved	Considered complete upon installation of approved interpretation program, if required.	Planning Department

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component. The archeological consultant's work shall be conducted at the direction of the ERO, and in consultation with the project sponsors. All plans and recommendations for interpretation by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.			interpretation program.		
Mitigation Measure M-CR-5: Preparation of Historic Resource Evaluation Reports, Review, and Performance Criteria. Prior to Port issuance of building permits associated with Buildings 2, 12 and 21, Port of San Francisco Preservation staff shall review and approve future rehabilitation design proposals for Buildings 2, 12, and 21. Submitted rehabilitation design proposals for Buildings 2 and 12 shall include, in addition to proposed building design, detail on the proposed landscaping treatment within a 20-foot-wide perimeter of each building. The Port's review and analysis would be informed by Historic Resource Evaluation(s) provided by the project sponsors. The Historic Resource Evaluation(s) shall be prepared by a qualified consultant who meets or exceeds the Secretary of the Interior's Professional Qualification Standards in historic architecture or architectural history. The scope of the Historic Resource Evaluation(s) shall be reviewed and approved by Port Preservation staff prior to the start of work. Following review of the completed Historic Resource Evaluation(s), Port preservation staff would prepare one or more Historic Resource Evaluation Response(s) that would contain a determination as to the effects, if any, on historical resources of the proposed renovation. The Port shall not issue buildings permits associated with Buildings 2, 12, and 21 until Port preservation staff conclude that the design (1) conforms with the Secretary of the Interior's Standards for Rehabilitation; (2) is compatible with the UIW Historic District; and (3) preserves the building's historic materials and character-defining features, and repairs instead of replaces deteriorated features, where feasible. Should alternative materials be proposed for replacement of historic materials, they shall be in keeping with the size, scale, color, texture, and general appearance. The performance criteria shall ensure	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Prior to the issuance of building permits associated with Buildings 2, 12 and 21.	Qualified historian to prepare historic resource evaluation documentation and present to Port staff to determine conformance to the Secretary's Standards.	Considered complete upon approval by the Port staff.	Port

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retention of the following character-defining features of each historic building: • **Building 2**: (1) board-formed concrete construction; (2) six-story height; (3) flat roof; (4) rectangular plan and north-south orientation; (5) regular pattern of window openings on east and west elevations; (6) steel, multi-pane, fixed sash windows (floors 1-5); (7) wood sash windows (floor 6); (8) elevator/stair tower that rises above roofline and projects slightly from west façade. • **Building 12**: (1) steel and wood construction; (2) corrugated steel cladding (except the as-built south elevation which was always open to Building 15); (3) 60-foot height; (4) Aiken roof configuration with five raised, glazed monitors; (5) clerestory multi-lite steel sash awning windows along the north and south sides of the monitors; (6) multi-lite, steel sash awning widows, arranged in three bands (with a double-height bottom band) on the north and west elevations, and in four bands on the east elevation; (7) 12-bay configuration of east and west elevations; (8) north-south roof ridge from which roof slopes gently (1/4 inch per foot) to the east and west • **Building 21:** (1) steel frame construction; (2) corrugated metal cladding; (3) double-gable roof clad in corrugated metal, with wide roof monitor at each gable; (4) multi-lite, double hung wood or horizontal steel sash windows; and (5) two pairs of steel freight loading doors on the north elevation, glazed with 12 lites per door. Port staff shall not approve any proposal for rehabilitation of Buildings 2, 12, and 21 unless they find that such a scheme conforms to the Secretary's Standards as specified for each building.					
Mitigation Measure M-CR-11: Performance Criteria and Review Process for New Construction In addition to the standards and guidelines established as part of the Pier 70	Project sponsors	Prior to issuance of a building permit for new	San Francisco Preservation Planning staff, in consultation with	Considered complete when Planning and Port Preservation	Planning Department

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SUD and *Design for Development*, new construction and site development within the Pier 70 SUD shall be compatible with the character of the UIW Historic District and shall maintain and support the District's character-defining features through the following performance criteria (terminology used has definition as provided in the *Design for Development*): 1. New construction shall comply with the Secretary of the Interior's Rehabilitation Standard No. 9: "New Addition, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the integrity of the property and its environment." 2. New construction shall comply with the Infill Development Design Criteria in the Port of San Francisco's *Pier 70 Preferred Master Plan* (2010) as found in Chapter 8, pp 57-69 (a policy document endorsed by the Port Commission to guide staff planning at Pier 70). 3. New construction shall be purpose-built structures of varying heights and massing located within close proximity to one another. 4. New construction shall not mimic historic features or architectural details of contributing buildings within the District. New construction may reference, but shall not replicate, historic architectural features or details. 5. New construction shall be contextually appropriate in terms of massing, size, scale, and architectural features, not only with the remaining historic buildings, but with one another. 6. New construction shall reinforce variety through the use of materials, architectural styles, rooflines, building heights, and window types and through a contemporary palette of materials as well as those found within the District.		construction.	the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning and Port staff that confirms compliance of all proposed new construction with these guiding plans and policies. San Francisco	staff note compliance with the Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, outlined in the written memorandum.	

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7. Parcel development shall be limited to the new construction zones identified in *Design for Development* Figure 6.3.1: Allowable New Construction Zones. 8. The maximum height of new construction shall be consistent with the parcel heights identified in *Design for Development* Figure 6.4.2: Building Height Maximum. 9. The use of street trees and landscape materials shall be limited and used judiciously within the Pier 70 SUD. Greater use of trees and landscape materials shall be allowed in designated areas consistent with *Design for Development* Figure 4.8.1: Street Trees and Plantings Plan. 10. New construction shall be permitted adjacent to contributing buildings as identified in *Design for Development* Figure 6.3.2: New Construction Buffers. 11. No substantive exterior additions shall be permitted to contributing Buildings 2, 12, or 21. Building 12 did not historically have a south-facing façade; therefore, rehabilitation will by necessity construct a new south elevation wall. Building 21 shall be relocated approximately 75 feet east of its present placement, to maintain the general historic context of the resource in spatial relationship to other resources. Building 21's orientation shall be maintained. <u>Building Specific Standards</u> Each development parcel within the Pier 70 SUD has a different physical proximity and visual relationship to the contributing buildings within the UIW Historic District. For those façades immediately adjacent to or facing contributing buildings, building design shall be responsive to identified character-defining features in the manner described in the *Design for Development* Buildings chapter. All other façades shall have greater freedom in the expression of scale, color, use of material, and overall appearance, and shall be permitted if consistent with Secretary Standard No. 9 and the *Design*			Preservation Planning staff must make determination in compliance with the timelines outlined in the Pier 70 Special Use District section of the Planning Code for review of vertical design.		

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for Development. Table M.CR.1: Building-Specific Responsiveness, indicates resources that are located adjacent to, and have the greatest influence on the design of, the noted development parcel façade.					

Table M.CR.1: Building-Specific Responsiveness

Façade/Parcel Name-Number	Contributing Building (Building No.)
North and West: A	113
North and Northeast; B	113, 6
North; C1	116
East and South: C2	12
South and West; D	2, 12
East and South; E1	21
West: E2	12
West; E4	21
North; F/G	12
East; PKN	113-116

Source: ESA 2015.

Palette of Materials

In addition to the standards and guidelines pertaining to application of

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materials in the *Design for Development*, the following material performance standards would apply to the building design on the development parcels (terminology used has definition as provided in the *Design for Development*): • Masonry panels that replicate traditional nineteenth or twentieth century brick masonry patterns shall not be allowed on the east façade of Parcel PKN, north and west façades of Parcel A or on the north façade of Parcel C1. • Smooth, flat, minimally detailed glass curtain walls shall not be allowed on the façades listed above. Glass with expressed articulation and visual depth or that expresses underlying structure is an allowable material throughout the entirety of the Pier 70 SUD. • Coarse-sand finished stucco shall not be allowed as a primary material within the entirety of the UIW Historic District. • Bamboo wood siding shall not be allowed on façades listed above or as a primary façade material. • Laminated timber panels shall not be allowed on façades listed above. • When considering material selection immediately adjacent to contributing buildings (e.g., 20th Street Historic Core; Buildings 2, 12, and 21; and Buildings 103, 106, 107, and 108 located within or immediately adjacent to the BAE Systems site), characteristics of compatibility and differentiation shall both be taken into account. Material selection shall not duplicate adjacent building primary materials and treatments, nor shall they establish a false sense of historic development. • Avoid conflict of new materials that appear similar or attempt to replicate historic materials. For example, Building 12 has character-defining corrugated steel cladding. As such, the eastern					

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façade of Parcel C2, the northern façade of Parcels F and G, and the southern façade of Parcel D1 shall not use corrugated steel cladding as a primary material. As another example, Building 113 has character-defining brick-masonry construction. As such, the northern and western façades of Parcel A and the eastern façade of Parcel K North shall not use brick masonry as a primary material. • Use of contemporary materials shall reflect the scale and proportions of historic materials used within the UIW Historic District. • Modern materials shall be designed and detailed in a manner to reflect but not replicate the scale, pattern, and rhythm of adjacent contributing buildings' exterior materials. Review Process Prior to Port issuance of building permits associated with new construction, San Francisco Preservation Planning staff, in consultation with the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning staff that confirms compliance of all proposed new construction with these guiding plans and policies.					
Transportation and Circulation Mitigation Measures					
Mitigation Measure M-TR-5: Monitor and increase capacity on the 48 Quintara/24th Street bus routes as needed. Prior to approval of the Proposed Project's phase applications, project sponsors shall demonstrate that the capacity of the 48 Quintara/24th Street bus route has not exceeded 85 percent capacity utilization, and that future demand associated with build-out and occupancy of the phase will not cause	Developer, TMA, and SFMTA. Documentation of capacity of the 48 Quintara/24th Street	Demonstration of capacity: Prior to approval of the project's phase applications:	Project sponsors to demonstrate to the SFMTA that each building for which temporary certificates of occupancy are	Considered complete upon approval of the project's phase application.	Planning Department, SFMTA

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the route to exceed its utilization. Forecasts of travel behavior of future phases could be based on trip generation rates forecast in the EIR or based on subsequent surveys of occupants of the project, possibly including surveys conducted as part of ongoing TDM monitoring efforts required as part of Air Quality Mitigation Measure M-AQ-1f: Transportation Demand Management. If trip generation calculations or monitoring surveys demonstrate that a specific phase of the Proposed Project will cause capacity on the 48 Quintara/24th Street route to exceed 85 percent, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA through the following means: • At SFMTA's request, the project sponsors shall pay the capital costs for additional buses (up to a maximum of four in the Maximum Residential Scenario and six in the Maximum Commercial Scenario). If the SFMTA requests the project sponsor to pay the capital costs of the buses, the SFMTA would need to find funding to pay for the added operating cost associated with operating increased service made possible by the increased vehicle fleet. The source of that funding has not been established. Alternatively, if SFMTA determines that other measures to increase capacity along the route would be more desirable than adding buses, the project sponsors shall pay an amount equivalent to the cost of the required number of buses toward completion of one or more of the following, as determined by SFMTA: • Convert to using higher-capacity vehicles on the 48 Quintara/24th Street route. In this case, the project sponsors shall pay a portion of the capital costs to convert the route to articulated buses. Some bus stops along the route may not currently be configured to accommodate the longer articulated buses. Some bus zones could likely be extended by removing one or more parking spaces; in some locations, appropriate space may not be available. The	bus route shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using a methodology approved by SFMTA and Planning. If documentation of capacity is based on monitoring surveys, the transportation consultant shall submit raw data from such surveys concurrently to SFMTA, the Planning Department, and project sponsors.	If project sponsors demonstrate to the SFMTA that the phase would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR, further monitoring is not required during that phase. <u>Capital Costs</u>: Payment required after SFMTA affirms via letter to the project sponsors that mitigation funds will be	requested would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR. If the project demonstrates (using trip generation rates forecasted in the EIR or through surveys of existing travel behavior at the site) that a specific building would cause capacity to exceed 85 percent based on the Baseline scenario in the EIR or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline		

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project sponsors' contribution may not be adequate to facilitate the full conversion of the route to articulated buses; therefore, a source of funding would need to be established to complete the remainder, including improvements to bus stop capacity at all of the bus stops along the route that do not currently accommodate articulated buses. • SFMTA may determine that instead of adding more buses to a congested route, it would be more desirable to increase travel speeds along the route. In this case, the project sponsors' contribution would be used to fund a study to identify appropriate and feasible improvements and/or implement a portion of the improvements that would increase travel speeds sufficiently to increase capacity along the bus route such that the project's impacts along the route would be determined to be less than significant. Increased speeds could be accomplished by funding a portion of the planned bus rapid transit system along 16th Street for the 22 Fillmore between Church and Third streets. Adding signals on Pennsylvania Street and 22nd Street may serve to provide increased travel speeds on this relatively short segment of the bus routes. The project sponsors' contribution may not be adequate to fully achieve the capacity increases needed to reduce the project's impacts and SFMTA may need to secure additional sources of funding. Another option to increase capacity along the corridor is to add new a Muni service route in this area. If this option is selected, project sponsors shall fund purchase of the same number of new vehicles outlined in the first option (four for the Maximum Residential Alternative and six for the Maximum Commercial Alternative) to be operated along the new route. By providing an additional service route, a percentage of the current transit riders on the 48 Quintara/24th Street would likely shift to the new route, lowering the capacity utilization below the 85 percent utilization threshold. As for the first option, funding would need to be secured to pay for operating the new route.		spent on implementation of M-TR-5 through purchase of additional buses or alternative measure in accordance with M-TR-5. Capital costs for more than four buses, up to a maximum of six buses, shall only be required if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR, and if project sponsors demonstrate that the	scenario without the Proposed Project, and the SFMTA has committed to implement M-TR-5, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA.		

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		building would cause capacity to exceed 85 percent or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline scenario without the Proposed Project.			
Mitigation Measure M-TR-10: Improve pedestrian facilities on Illinois Street adjacent to and leading to the project site. As part of construction of the Proposed Project roadway network, the project sponsors shall implement the following improvements: • Install ADA curb ramps on all corners at the intersection of 22nd Street and Illinois Street • Signalize the intersections of Illinois Street with 20th and 22nd Street. • Modify the sidewalk on the east side of Illinois Street between 22nd and 20th streets to a minimum of 10 feet. Relocate	Project sponsors shall implement the improvements.	During construction of street improvements adjacent to pedestrian facilities on Illinois Street identified in Mitigation Measure M-TR-10.	SFMTA reviews signal and site plans and maps for improvements identified in Mitigation Measure M-TR-10.	Considered complete when street improvements have been built.	SFMTA, Port

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obstructions, such as fire hydrants and power poles, as feasible, to ensure an accessible path of travel is provided to and from the Proposed Project.					
Mitigation Measure M-TR-12A: Coordinate Deliveries The Project's Transportation Coordinator shall coordinate with building tenants and delivery services to minimize deliveries during a.m. and p.m. peak periods. Although many deliveries cannot be limited to specific hours, the Transportation Coordinator shall work with tenants to find opportunities to consolidate deliveries and reduce the need for peak period deliveries, where possible.	Transportation Management Agency Transportation Coordinator.	On-going.	Transportation Management Agency Transportation Coordinator to coordinate with building tenants and delivery services to consolidate deliveries and reduce the need for peak period deliveries, where possible.	On-going during project operations.	Port
Mitigation Measure M-TR-12B: Monitor loading activity and convert general purpose on-street parking spaces to commercial loading spaces, as needed. After completion of the first phase of the Proposed Project, and prior to approval of each subsequent phase, the project sponsors shall conduct a study of utilization of on- and off-street commercial loading spaces. Prior to completion, the methodology for the study shall be reviewed and approved by either: (a) Port Staff in consultation with SFMTA Staff for areas within Port jurisdiction; or (b) SFMTA Staff in consultation with Port Staff for areas within SFMTA jurisdiction. If the result of the study indicates that fewer than 15 percent of the commercial loading spaces are available during the peak loading period, the project sponsors shall incorporate measures to convert existing or proposed general purpose on-street parking spaces to commercial parking spaces in addition to the required off-street spaces.	Developer, TMA or Port.	Prior to approval of the project's phase applications after completion of the first phase.	Project sponsors or TMA to conduct a commercial loading study for the Port.	Considered complete after the Port Staff reviews and approves the study and the project sponsors, Port or TMA incorporates any additional measures necessary for commercial loading.	Port

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Mitigation Measure M-C-TR-4A: Increase capacity on the 48 Quintara/24th bus route under the Maximum Residential Scenario. The project sponsors shall contribute funds for one additional vehicle (in addition to and separate from the four prescribed under Mitigation Measure M-TR-5 for the Maximum Residential Scenario) to reduce the Proposed Project's contribution to the significant cumulative impact to not cumulatively considerable. This shall be considered the Proposed Project's fair share toward mitigating this significant cumulative impact. If SFMTA adopts a strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA and SFMTA Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	Demonstration of Capacity: If necessary, prior to approval of the project's phase applications. Capital Costs: Payment confirmed prior to issuance of building permit for building that would result in exceedance of 85 percent capacity utilization. Capital costs for more than four buses, up to a maximum of six buses, shall be paid if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial	If the Maximum Residential Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors	SFMTA

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		use, identified in Table 2.3 of the EIR.			
Mitigation Measure M-C-TR-4B: Increase capacity on the 22 Fillmore bus route under the Maximum Commercial Scenario. The project sponsors shall contribute funds for two additional vehicles to reduce the Proposed Project's contribution to the significant cumulative impact to not considerable. This shall be considered the Proposed Project's fair share toward mitigating this cumulative impact. If SFMTA adopts an alternate strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA, and SFMTA. Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	If necessary, prior to approval of the project's final phase application. Funds shall be contributed if the total gsf of commercial use for the Project in the final phase application exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR.	If the Maximum Commercial Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors.	SFMTA
Noise and Vibration Mitigation Measures					
Mitigation Measure M-NO-1: Construction Noise Control Plan. Over the project's approximately 11-year construction duration, project	Project sponsors.	Prior to the start of construction activities;	Project sponsors to submit the Construction Noise	Considered complete upon submittal of the	Port or DBI

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
contractors for all construction projects on the Illinois Parcels and 28-Acre Site will be subject to construction-related time-of-day and noise limits specified in Section 2907(a) of the Police Code, as outlined above. Therefore, prior to construction, a Construction Noise Control Plan shall be prepared by the project sponsors and submitted to the Port. The construction noise control plan shall demonstrate compliance with the Noise Ordinance limits. Noise reduction strategies that could be incorporated into this plan to ensure compliance with ordinance limits may include, but are not limited to, the following: • Require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds). • Require the general contractor to locate stationary noise sources (such as the rock/concrete crusher or compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise by as much as 5 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, to the maximum extent practicable. • Require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which would reduce noise levels by as much as 10 dBA.		implementation ongoing during construction.	Control Plan to the Port. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Construction Noise Control Plan to the Port.	

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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• Include noise control requirements for construction equipment and tools, including concrete saws, in specifications provided to construction contractors to the maximum extent practicable. Such requirements could include, but are not limited to, erecting temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses; utilizing noise control blankets on a building structure as the building is erected to reduce noise levels emanating from the construction site; the use of blasting mats during controlled blasting periods to reduce noise and dust; performing all work in a manner that minimizes noise; using equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants; and selecting haul routes that avoid residential uses. • Prior to the issuance of each building permit, along with the submission of construction documents, submit to the Port , as appropriate, a plan to track and respond to complaints pertaining to construction noise. The plan shall include the following measures: (1) a procedure and phone numbers for notifying the Port, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing permitted construction days and hours, noise complaint procedures, and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area and the American Industrial Center (AIC) at least 30 days in advance of extreme noise-generating activities (such as pile driving) about the estimated duration of the activity.	Project sponsors	Prior to the issuance of each building permit for duration of the project.	Project sponsors to submit a plan to track and respond to complaints pertaining to construction noise. A single plan or multiple plans may be produced to address project phasing.	Considered complete upon review and approval of the plan by the Port.	
Mitigation Measure M-NO-2: Noise Control Measures During Pile	Project sponsors and construction	Prior to receiving a	Project sponsors to submit to the Port	Considered complete upon	Port or DBI

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

MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
Driving. The Construction Noise Control Plan (required under Mitigation Measure M-NO-1) shall also outline a set of site-specific noise and vibration attenuation measures for each construction phase when pile driving is proposed to occur. These attenuation measures shall be included wherever impact equipment is proposed to be used on the Illinois Parcels and/or 28-Acre Site. As many of the following control strategies shall be included in the Noise Control Plan, as feasible: • Implement "quiet" pile-driving technology such as pre-drilling piles where feasible to reduce construction-related noise and vibration. • Use pile-driving equipment with state-of-the-art noise shielding and muffling devices. • Use pre-drilled or sonic or vibratory drivers, rather than impact drivers, wherever feasible (including slipways) and where vibration-induced liquefaction would not occur. • Schedule pile-driving activity for times of the day that minimize disturbance to residents as well as commercial uses located on-site and nearby. • Erect temporary plywood or similar solid noise barriers along the boundaries of each Proposed Project parcel as necessary to shield affected sensitive receptors. • Other equivalent technologies that emerge over time. • If CRF (including rock drills) were to occur at the same time as pile driving activities in the same area and in proximity to noise-sensitive receptors, pile drivers shall be set back at least 100 feet while rock drills shall be set back at least 50 feet (or vice versa)	contractor(s).	building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	submittal of documentation incorporating identified practices.	

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
from any given sensitive receptor.					
Mitigation Measure M-NO-3: Vibration Control Measures During Construction. As part of the Construction Noise Control Plan required under Mitigation Measure M-NO-1, appropriate vibration controls (including pre-drilling pile holes and using smaller vibratory equipment) shall be specified to ensure that the vibration limit of 0.5 in/sec PPV can be met at adjacent or nearby existing structures and Proposed Project buildings located on the Illinois Parcels and/or 28-Acre Site, except as noted below: • Where pile driving, CRF, and other construction activities involving the use of heavy equipment would occur in proximity to any contributing building to the Union Iron Works Historic District, the project sponsors shall undertake a monitoring program to minimize damage to such adjacent historic buildings and to ensure that any such damage is documented and repaired. The monitoring program, which shall apply within 160 feet where pile driving would be used, 50 feet of where CRF would be required, and within 25 feet of other heavy equipment operation, shall include the following components: o Prior to the start of any ground-disturbing activity, the project sponsors shall engage a historic architect or qualified historic preservation professional to undertake a pre-construction survey of historical resource(s) identified by the Port within 160 feet of planned construction to document and photograph the buildings' existing conditions. o Based on the construction and condition of the resource(s), a structural engineer or other qualified entity shall establish a maximum vibration level that shall not be exceeded at each building, based on existing conditions, character-defining features, soils conditions and anticipated construction practices in use at the time (a common standard is 0.2 inch per	Project sponsors and construction contractor(s).	Prior to receiving a building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	Project sponsors to submit to Port documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Considered complete upon submittal of documentation incorporating identified practices.	Port or Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
second, peak particle velocity). o To ensure that vibration levels do not exceed the established standard, a qualified acoustical/vibration consultant shall monitor vibration levels at each structure within 160 feet of planned construction and shall prohibit vibratory construction activities that generate vibration levels in excess of the standard. Should vibration levels be observed in excess of the standard, construction shall be halted and alternative construction techniques put in practice. (For example, pre-drilled piles could be substituted for driven piles, if soil conditions allow; smaller, lighter equipment could possibly also be used in some cases.) The consultant shall conduct regular periodic inspections of each building within 160 feet of planned construction during ground-disturbing activity on the project site. Should damage to a building occur as a result of ground-disturbing activity on the site, the building(s) shall be remediated to its pre-construction condition at the conclusion of ground-disturbing activity on the site. o In areas with a "very high" or "high" susceptibility for vibration-induced liquefaction or differential settlement risks, the project's geotechnical engineer shall specify an appropriate vibration limit based on proposed construction activities and proximity to liquefaction susceptibility zones and modify construction practices to ensure that construction-related vibration does not cause liquefaction hazards at these homes.					
Mitigation Measure M-NO-4a: Stationary Equipment Noise Controls. Noise attenuation measures shall be incorporated into all stationary equipment (including HVAC equipment and emergency generators) installed on buildings constructed on the Illinois Parcels and 28-Acre Site as well as into the below-grade or enclosed wastewater pump station as necessary to meet noise limits specified in Section 2909 of the Police Code.* Interior	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for each building located on the Illinois Parcels	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port	Port or Planning Department/DBI

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
noise limits shall be met under both existing and future noise conditions, accounting for foreseeable changes in noise conditions in the future (i.e., changes in on-site building configurations). Noise attenuation measures could include provision of sound enclosures/barriers, addition of roof parapets to block noise, increasing setback distances from sensitive receptors, provision of louvered vent openings, location of vent openings away from adjacent commercial uses, and restriction of generator testing to the daytime hours. * Under Section 2909 of the Police Code, stationary sources are not permitted to result in noise levels that exceed the existing ambient (L90) noise level by more than 5 dBA on residential property, 8 dBA on commercial and industrial property, and 10 dBA on public property. Section 2909(d) states that no fixed noise source may cause the noise level measured inside any sleeping or living room in a dwelling unit on residential property to exceed 45 dBA between 10:00 p.m. and 7:00 a.m. or 55 dBA between 7:00 a.m. and 10:00 p.m. with windows open, except where building ventilation is achieved through mechanical systems that allow windows to remain closed.		or the 28-Acre Site, along with the submission of construction documents, the project sponsors shall submit to the Port and the DBI plans for noise attenuation measures on all stationary equipment.			
Mitigation Measure M-NO-4b: Design of Future Noise-Generating Uses near Residential Uses. Future commercial/office and RALI uses shall be designed to minimize the potential for sleep disturbance at any future adjacent residential uses. Design approaches such as the following could be incorporated into future development plans to minimize the potential for noise conflicts of future uses on the project site: • <u>Design of Future Noise-Generating Commercial/Office and RALI Uses.</u> To reduce potential conflicts between sensitive receptors and new noise-generating commercial or RALI uses located adjacent to these receptors, exterior facilities such as loading areas/docks, trash enclosures, and surface parking lots shall be located on the sides of buildings facing away from existing or planned sensitive receptors (residences or passive open space). If	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for commercial, RALI, and parking uses, along with the submission of construction documents, the project sponsors shall submit to the and DBI plans to minimize	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port.	Port or Planning Department/DBI

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this is not feasible, these types of facilities shall be enclosed or equipped with appropriate noise shielding. • Design of Future Above-Ground Parking Structure. If parking structures are constructed on Parcels C1 or C2, the sides of the parking structures facing adjacent or nearby existing or planned residential uses shall be designed to shield residential receptors from noise associated with parking cars.		noise conflicts with sensitive receivers,			
Mitigation Measure M-NO-6: Design of Future Noise-Sensitive Uses Prior to issuance of a building permit for vertical construction of specific residential building design on each parcel, a noise study shall be conducted by a qualified acoustician, who shall determine the need to incorporate noise attenuation measures into the building design in order to meet Title 24's interior noise limit for residential uses as well as the City's (Article 29, Section 2909(d)) 45-dBA (Ldn) interior noise limit for residential uses. This evaluation shall account for noise shielding by buildings existing at the time of the proposal, potential increases in ambient noise levels resulting from the removal of buildings that are planned to be demolished, all planned commercial or open space uses in adjacent areas, any known variations in project build-out that have or will occur (building heights, location, and phasing), any changes in activities adjacent to or near the Illinois Parcels or 28-Acre Site (given the Proposed Project's long build-out period), any new shielding benefits provided by surrounding buildings that exist at the time of development, future cumulative traffic noise increases on adjacent roadways; existing and planned stationary sources (i.e., emergency generators, HVAC, etc.), and future noise increases from all known cumulative projects located with direct line-of-sight to the project building. To minimize the potential for sleep disturbance effects from tonal noise or nighttime noise events associated with nearby industrial uses, predicted noise levels at each project building shall account for 24/7 operation of the BAE Systems Ship Repair facility, 24/7 transformer noise at Potrero Substation (if it remains an open air facility), and industrial activities at the AIC, to the	Project sponsors and qualified acoustician.	Prior to the issuance of the building permit for vertical construction of any residential building on each parcel, a noise study shall be prepared by a qualified acoustician.	Port Staff to review the noise study. A single noise study or multiple noise studies may be produced to address project phasing.	Considered complete after submittal and approval of the noise study by the Port.	Port or Planning Department/DBI

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extent such use(s) are in operation at the time the analysis is conducted. Noise reduction strategies such as the following could be incorporated into the project design as necessary to meet Title 24 interior limit and minimize the potential for sleep disturbance from adjacent industrial uses: • Orient bedrooms away from major noise sources (i.e., major streets, open space/recreation areas where special events would occur, and existing adjacent industrial uses, including but not limited to the AIC, PG&E Hoedown Yard (if it is still operating at that time), Potrero Substation, and the BAE site) and/or provide additional enhanced noise insulation features (higher STC ratings) or mechanical ventilation to minimize the effects of maximum instantaneous noise levels generated by these uses even though there is no code requirement to reduce Lmax noise levels. Such measures shall be implemented on Parcels D and E1 (both scenarios), Building 2 (Maximum Residential Scenario only), Parcels PKN (both scenarios), PKS (both scenarios), and HDY (Maximum Residential Scenario only); • Utilize enhanced exterior wall and roof-ceiling assemblies (with higher STC ratings), including increased insulation; • Utilize windows with higher STC / Outdoor/Indoor Transmission Class (OITC) ratings; • Employ architectural sound barriers as part of courtyards or building open space to maximize building shielding effects, and locate living spaces/bedrooms toward courtyards wherever possible; and Locate interior hallways (accessing residential units) adjacent to noisy streets or existing/planned industrial or commercial development.					
Mitigation Measure M-NO-7: Noise Control Plan for Special Event	Developer, Port, parks management	Prior to operation of a	Developer, Port, parks management	Considered complete upon	Port

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Outdoor Amplified Sound. The project sponsors shall develop and implement a Noise Control Plan for operations at the proposed entertainment venues to reduce the potential for noise impacts from public address and/or amplified music. This Noise Control Plan shall contain the following elements: • The project sponsors shall comply with noise controls and restrictions in applicable entertainment permit requirements for outdoor concerts. • Speaker systems shall be directed away from the nearest sensitive receptors to the degree feasible. • Outdoor speaker systems shall be operated consistent with the restrictions of Section 2909 of the San Francisco Police Code, and conform to a performance standard of 8 dBA and dBC over existing ambient L90 noise levels at the nearest residential use.	entity, and/or parks programming entity.	special outdoor amplified sound, the project sponsors, parks management entity, and/or parks programming entity to develop a Noise Control Plan prior to issuance of event permit.	entity, and/or parks programming entity shall submit the Noise Control Plan to the Port.	submission and approval of the NCP by the Port.	
Air Quality Mitigation Measures					
Mitigation Measure M-AQ-1a: Construction Emissions Minimization The following mitigation measure is required during construction of Phases 3, 4, and 5, or after build-out of 1.3 million gross square feet of development, whichever comes first: A. *Construction Emissions Minimization Plan.* Prior to issuance of a site permit, the project sponsors shall submit a Construction Emissions Minimization Plan (Plan) to the Port or Planning Department. The Plan shall detail project compliance with the following requirements: 1. Where access to alternative sources of power is available, portable diesel generators used during construction shall be prohibited. Where portable diesel engines are required because alternative sources of power are not available, the	Project sponsors and construction contractor(s).	Prior to issuance of a site permit, the project sponsors must submit Construction Emissions Minimization Plan Prior to the commencement of construction activities	Project sponsors or contractor to submit a Construction Emissions Minimization Plan. Quarterly reports shall be submitted to Port Staff or Planning Department indicating the construction phase and off-road equipment	Considered complete upon Port or Planning Staff review and approval of Construction Emissions Minimization Plan or alternative measures that achieve the same emissions reduction.	Port or Planning Department

<table>
<tr><th colspan="6">MITIGATION MONITORING AND REPORTING PROGRAM FOR
PIER 70 MIXED-USE DISTRICT PROJECT</th></tr>
<tr><th>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</th><th>Implementation Responsibility</th><th>Mitigation Schedule</th><th>Monitoring/ Reporting Responsibility</th><th>Monitoring Schedule</th><th>Monitoring Agency[1]</th></tr>
<tr><td>diesel engine shall meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available, as defined below.

2. All off-road equipment greater than 25 horsepower that operates for more than 20 total hours over the entire duration of construction activities shall have engines that meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available. If engines that comply with Tier 4 off-road emission standards are not commercially available, then the project sponsors shall provide the next cleanest piece of off-road equipment as provided by the step-down schedules in Table M-AQ-1-1.

<table>
<tr><th colspan="3">Table M-AQ-1-1: Off-Road Equipment Compliance Step-Down Schedule</th></tr>
<tr><th>Compliance Alternative</th><th>Engine Emission Standard</th><th>Emissions Control</th></tr>
<tr><td>1</td><td>Tier 3</td><td>CARB PM VDECS (85%)[1]</td></tr>
<tr><td>2</td><td>Tier 2</td><td>CARB PM VDECS (85%)</td></tr>
<tr><td colspan="3">**How to use the table**: If the requirements of (A)(2) cannot be met, then the project sponsors would need to meet Compliance Alternative 1. Should the project sponsors not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met.
[1] CARB, Currently Verified Diesel Emission Control Strategies (VDECS).</td></tr>
</table>
</td><td></td><td>during Phase 3, 4, and 5, or prior to construction following build-out of 1.3 million gross square feet of development, the project sponsors must certify (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.

The Plan shall be kept on site and available for review. A sign shall be posted at the perimeter of the construction site indicating the basic</td><td>information used during each phase.
For off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.
Within six months of the completion of construction activities, the project sponsors shall submit to Port Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.</td><td></td><td></td></tr>
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MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
Available online at http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm. Accessed January 14, 2016. i. With respect to Tier 4 equipment, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; and (ii) geographic proximity of equipment to the project site. ii. With respect to renewable diesel, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; (ii) geographic proximity of fuel source to the project site; and (iii) cost of renewable diesel is within 10 percent of Ultra Low Sulfur Diesel #2 market price. iii. The project sponsors shall maintain records concerning its efforts to comply with this requirement. Should the project sponsor determine either that an off-road vehicle that meets Tier 4 emissions standards or that renewable diesel are not commercially available, the project sponsor shall submit documentation to the satisfaction of Port or Planning Staff and, for the former condition, shall identify the next cleanest piece of equipment that would be use, in compliance with Table M-AQ-1-1. 3. The project sponsors shall ensure that future developers or their contractors require the idling time for off-road and on-road equipment be limited to no more than 2 minutes, except as provided in exceptions to the applicable State regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in		requirements of the Plan and where copies of the Plan are available to the public for review.			

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multiple languages (English, Spanish, and Chinese) in designated queuing areas and at the construction site to remind operators of the 2-minute idling limit. 4. The project sponsors shall require that each construction contractor mandate that construction operators properly maintain and tune equipment in accordance with manufacturer specifications. 5. The Plan shall include best available estimates of the construction timeline by phase with a description of each piece of off-road equipment required for every construction phase and shall be updated pursuant to the reporting requirements in Section B below. Reporting requirements for off-road equipment descriptions and information shall include as much detail as is available, but are not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For Verified Diesel Emission Control Strategies (VDECS) installed, descriptions and information shall include technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date and hour meter reading on installation date. The Plan shall also indicate whether renewable diesel will be used to power the equipment. The Plan shall also include anticipated fuel usage and hours of operation so that emissions can be estimated. 6. The project sponsors and their construction contractors shall keep the Plan available for public review on site during working hours. Each construction contractor shall post at the perimeter of the project site a legible and visible sign summarizing the requirements of the Plan. The sign shall also state that the public may ask to inspect the Plan at any time					

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during working hours, and shall explain how to request inspection of the Plan. Signs shall be posted on all sides of the construction site that face a public right-of-way. The project sponsors shall provide copies of the Plan to members of the public as requested. B. *Reporting.* Quarterly reports shall be submitted to Port or Planning Staff indicating the construction activities undertaken and information about the off-road equipment used, including the information required in Section A(5). In addition, reporting shall include the approximate amount of renewable diesel fuel used. Within 6 months of the completion of all project construction activities, the project sponsors shall submit to Port or Planning Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. The final report shall include detailed information required in Section A(5). In addition, reporting shall include the actual amount of renewable diesel fuel used. C. *Certification Statement and On-site Requirements.* Prior to the commencement of construction activities, the project sponsors shall certify through submission of city-standardized forms (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.					
Mitigation Measure M-AQ-1b: Diesel Backup Generator Specifications To reduce NOx associated with operation of the Maximum Commercial or Maximum Residential Scenarios, the project sponsors shall implement the following measures. A. All new diesel backup generators shall: 1. have engines that meet or exceed CARB Tier 4 off-road emission standards which have the lowest NOx emissions of commercially	Project sponsors	Prior to approval of a generator permit by Port Staff.	Anticipated location and engine specifications of a proposed diesel backup generator shall be submitted to the Port Staff for review and approval prior to	Considered complete upon review and approval by Port Staff.	Port

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available generators; and 2. be fueled with renewable diesel, if commercially available, which has been demonstrated to reduce NOx emissions by approximately 10 percent. B. All new diesel backup generators shall have an annual maintenance testing limit of 50 hours, subject to any further restrictions as may be imposed by the BAAQMD in its permitting process. C. For each new diesel backup generator permit submitted to BAAQMD for the project, anticipated location, and engine specifications shall be submitted to the Port Staff for review and approval prior to issuance of a permit for the generator from the San Francisco DBI or the Port. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment and any future replacement of the diesel backup generators shall be required to be consistent with these emissions specifications. The operator of the facility at which the generator is located shall maintain records of the testing schedule for each diesel backup generator for the life of that diesel backup generator and provide this information for review to the Port within 3 months of requesting such information.			issuance of a generator permit.		
Mitigation Measure M-AQ-1c: Use Low and Super-compliant VOC Architectural Coatings in Maintaining Buildings through Covenants Conditions and Restrictions (CC&Rs) and Ground Lease The Project sponsors shall require all developed parcels to include within their CC&R's and/or ground leases requirements for all future interior spaces to be repainted only with "Super-Compliant" Architectural Coatings (http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings). "Low-VOC" refers to paints that meet the more stringent regulatory limits in South Coast AQMD Rule 1113; however, many manufacturers have reformulated to levels well below these limits. These are referred to as "Super-Compliant" Architectural Coatings.	Project sponsors and construction contractor(s).	Project sponsors submit to the Port documentation of CC&R's and/or ground lease requirements prior to building occupancy	Project sponsors to include in CC&R's and/or ground lease requirements with buildings tenants prior to building occupancy.	Considered complete upon project sponsor submittal to the Port of documentation of CC&R's and/or ground lease requirements	Port or Planning Department

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		permit.			
Mitigation Measure M-AQ-1d: Promote use of Green Consumer Products The project sponsors shall provide education for residential and commercial tenants concerning green consumer products. Prior to receipt of any certificate of final occupancy and every five years thereafter, the project sponsors shall work with the San Francisco Department of Environment (SF Environment) to develop electronic correspondence to be distributed by email annually to residential and/or commercial tenants of each building on the project site that encourages the purchase of consumer products that generate lower than typical VOC emissions. The correspondence shall encourage environmentally preferable purchasing and shall include contact information and links to SF Approved. The website may also be used as an informational resource by businesses and residents.	Project sponsors.	Prior to occupancy of the building by tenants and every five years thereafter, project sponsors to distribute educational materials to tenants.	Project sponsors to work with SF Environment to develop educational materials..	Considered complete after distribution of educational materials to residential and commercial tenants.	Port or Planning Department
Mitigation Measure M-AQ-1e: Electrification of Loading Docks The project sponsors shall ensure that loading docks for retail, light industrial or warehouse uses that will receive deliveries from refrigerated transport trucks incorporate electrification hook-ups for transportation refrigeration units to avoid emissions generated by idling refrigerated transport trucks.	Project sponsors	Prior to issuance of a building permit for a building containing loading docks for retail, light industrial or warehouse uses.	Project sponsors to provide construction plans to DBI or the Port to ensure compliance.	Considered complete upon approval of construction plans by DBI or the Port.	Port or Planning Department
Mitigation Measure M-AQ-1f: Transportation Demand Management. The project sponsors shall prepare and implement a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20 percent compared to the total number of daily one-way vehicle trips identified in the project's Transportation Impact Study at project build-out. To ensure that this reduction goal could be reasonably achieved, the TDM Plan will have a monitoring goal of reducing by 20 percent the daily one-way vehicle trips calculated for each building that has received a	Developer to prepare and implement the TDM Plan, which will be implemented by the Transportation Management Association and will	Developer to prepare TDM Plan and submit to Planning Staff prior to approval of the project	Project sponsors to submit the TDM Plan to Planning Staff for review. Transportation Demand Management	The TDM Plan is considered complete upon approval by the Planning Staff. Annual monitoring	Planning Department

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Certificate of Occupancy and is at least 75% occupied compared to the daily one-way vehicle trips anticipated for that building based on anticipated development on that parcel, using the trip generation rates contained within the project's Transportation Impact Study. There shall be a Transportation Management Association that would be responsible for the administration, monitoring, and adjustment of the TDM Plan. The project sponsor is responsible for identifying the components of the TDM Plan that could reasonably be expected to achieve the reduction goal for each new building associated with the project, and for making good faith efforts to implement them. The TDM Plan may include, but is not limited to, the types of measures summarized below for explanatory example purposes. Actual TDM measures selected should include those from the TDM Program Standards, which describe the scope and applicability of candidate measures in detail and include: • Active Transportation: Provision of streetscape improvements to encourage walking, secure bicycle parking, shower and locker facilities for cyclists, subsidized bike share memberships for project occupants, bicycle repair and maintenance services, and other bicycle-related services; • Car-Share: Provision of car-share parking spaces and subsidized memberships for project occupants; • Delivery: Provision of amenities and services to support delivery of goods to project occupants; • Family-Oriented Measures: Provision of on-site childcare and other amenities to support the use of sustainable transportation modes by families; • High-Occupancy Vehicles: Provision of carpooling/vanpooling incentives and shuttle bus service; • Information and Communications: Provision of multimodal	be binding on all development parcels.		Association to submit monitoring report annually to Planning Staff and implement TDM Plan Adjustments (if required).	reports would be on-going during project buildout, or until five consecutive reporting periods show that the project has met its reduction goals, at which point reports would be submitted every three years.	

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wayfinding signage, transportation information displays, and tailored transportation marketing services; • Land Use: Provision of on-site affordable housing and healthy food retail services in underserved areas; • Parking: Provision of unbundled parking, short term daily parking provision, parking cash out offers, and reduced off-street parking supply. The TDM Plan shall include specific descriptions of each measure, including the degree of implementation (e.g., for how long will it be in place), and the population that each measure is intended to serve (e.g. residential tenants, retail visitors, employees of tenants, visitors, etc.). It shall also include a commitment to monitoring of person and vehicle trips traveling to and from the project site to determine the TDM Plan's effectiveness, as outlined below. The TDM Plan shall be submitted to the City to ensure that components of the TDM Plan intended to meet the reduction target are shown on the plans and/or ready to be implemented upon the issuance of each certificate of occupancy. *TDM Plan Monitoring and Reporting*: The Transportation Management Association, through an on-site Transportation Coordinator, shall collect data and make monitoring reports available for review and approval by the Planning Department staff. • Timing: Monitoring data shall be collected and reports shall be submitted to Planning Department staff every year (referred to as "reporting periods"), until five consecutive reporting periods					

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display the fully-built project has met the reduction goal, at which point monitoring data shall be submitted to Planning Department staff once every three years. The first monitoring report is required 18 months after issuance of the First Certificate of Occupancy for buildings that include off-street parking or the establishment of surface parking lots or garages that bring the project's total number of off-street parking spaces to greater than or equal to 500. Each trip count and survey (see below for description) shall be completed within 30 days following the end of the applicable reporting period. Each monitoring report shall be completed within 90 days following the applicable reporting period. The timing shall be modified such that a new monitoring report shall be required 12 months after adjustments are made to the TDM Plan in order to meet the reduction goal, as may be required in the "TDM Plan Adjustments" heading below. In addition, the timing may be modified by the Planning Department as needed to consolidate this requirement with other monitoring and/or reporting requirements for the project. • <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: o Trip Count and Intercept Survey: Trip count and intercept survey of persons and vehicles arriving and leaving the project site for no less than two days of the reporting period between 6:00 a.m. and 8:00 p.m. One day shall be a Tuesday, Wednesday, or Thursday during one week without federally recognized holidays, and another day shall be a Tuesday, Wednesday, or Thursday during another week without federally recognized holidays. The trip count and intercept survey shall be prepared by a qualified transportation or qualified survey consultant and the methodology shall be					

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approved by the Planning Department prior to conducting the components of the trip count and intercept survey. It is anticipated that the Planning Department will have a standard trip count and intercept survey methodology developed and available to project sponsors at the time of data collection. o Travel Demand Information: The above trip count and survey information shall be able to provide travel demand analysis characteristics (work and non-work trip counts, origins and destinations of trips to/from the project site, and modal split information) as outlined in the Planning Department's *Transportation Impact Analysis Guidelines for Environmental Review*, October 2002, or subsequent updates in effect at the time of the survey. o Documentation of Plan Implementation: The TDM Coordinator shall work in conjunction with the Planning Department to develop a survey (online or paper) that can be reasonably completed by the TDM Coordinator and/or TMA staff to document the implementation of TDM program elements and other basic information during the reporting period. This survey shall be included in the monitoring report submitted to Planning Department staff. o Degree of Implementation: The monitoring report shall include descriptions of the degree of implementation (e.g., how many tenants or visitors the TDM Plan will benefit, and on which locations within the site measures will be/have been placed, etc.) o Assistance and Confidentiality: Planning Department staff will assist the TDM Coordinator on questions regarding the components of the monitoring report and shall ensure that the identity of individual survey responders is protected. *TDM Plan Adjustments*. The TDM Plan shall be adjusted based on the					

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monitoring results if three consecutive reporting periods demonstrate that measures within the TDM Plan are not achieving the reduction goal. The TDM Plan adjustments shall be made in consultation with Planning Department staff and may require refinements to existing measures (e.g., change to subsidies, increased bicycle parking), inclusion of new measures (e.g., a new technology), or removal of existing measures (e.g., measures shown to be ineffective or induce vehicle trips). If three consecutive reporting periods' monitoring results demonstrate that measures within the TDM Plan are not achieving the reduction goal, the TDM Plan adjustments shall occur within 270 days following the last consecutive reporting period. The TDM Plan adjustments shall occur until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved. If the TDM Plan does not achieve the reduction goal then the City shall impose additional measures to reduce vehicle trips as prescribed under the development agreement, which may include restriction of additional off-street parking spaces beyond those previously established on the site, capital or operational improvements intended to reduce vehicle trips from the project, or other measures that support sustainable trip making, until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved.					
Mitigation Measure M-AQ-1g: Additional Mobile Source Control Measures The following Mobile Source Control Measures from the BAAQMD's 2010 Clean Air Plan shall be implemented: • Promote use of clean fuel-efficient vehicles through preferential (designated and proximate to entry) parking and/or installation of charging stations beyond the level required by the City's Green Building code, from 8 to 20 percent. • Promote zero-emission vehicles by requesting that any car share program operator include electric vehicles within its car share	Project sponsors and TMA.	On-going.	Project sponsors and TMA to implement measures	On-going.	Port or Planning Department/DBI

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program to reduce the need to have a vehicle or second vehicle as a part of the TDM program that would be required of all new developments.					
Mitigation Measure M-AQ-1h: Offset of Operational Emissions Prior to issuance of the final certificate of occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, the project sponsors, with the oversight of Port Staff, shall either: **(1) Directly fund or implement a specific offset project within San Francisco** to achieve reductions of 25 tons per year of ozone precursors and 1 ton of PM10. This offset is intended to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3. To qualify under this mitigation measure, the specific emissions offset project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements. A preferred offset project would be one implemented locally within the City and County of San Francisco. Prior to implementation of the offset project, the project sponsors must obtain Port Staff's approval of the proposed offset project by providing documentation of the estimated amount of emissions of ROG, NOx, and PM10 to be reduced (tons per year) within the SFBAAB from the emissions reduction project(s). The project sponsors shall notify Port Staff within 6 months of completion of the offset project for verification; or **(2) Pay a one-time mitigation offset fee** to the BAAQMD's Strategic Incentives Division in an amount no less than $18,030 per weighted ton of ozone precursors and PM10 per year above the significance threshold, calculated as the difference between total annual emissions at build out under mitigated conditions and the	Project sponsors.	Offsets for Phase 3/build-out of 1.3 million square feet: Upon completion of construction, and prior to issuance of a Certificate of Occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, developer shall demonstrate to the satisfaction of Port Staff that offsets have been funded or implemented,	Port Staff to approve the proposed offset project.	If project sponsor directly funds or implements a specific offset project, considered complete when Port Staff approves the proposed offset project prior to individual Certificates of Occupancy. If project sponsor pays a one-time mitigation offset fee, considered complete when documentation of payment is provided to Port Staff.	Port

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significance threshold in the EIR air quality analysis, which is 25 tons per year of ozone precursors and 1 ton of PM10, plus a 5 percent administrative fee, to fund one or more emissions reduction projects within the SFBAAB. This one-time fee is intended to fund emissions reduction projects to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3 or after completion of 1.3 million sf of development, whichever comes first. Documentation of payment shall be provided to Port Staff. Acceptance of this fee by the BAAQMD shall serve as an acknowledgment and commitment by the BAAQMD to implement one or more emissions reduction project(s) within 1 year of receipt of the mitigation fee to achieve the emission reduction objectives specified above, and provide documentation to Port Staff and to the project sponsors describing the project(s) funded by the mitigation fee, including the amount of emissions of ROG, NOx, and PM10 reduced (tons per year) within the SFBAAB from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation offset fee following implementation of the emission reduction project(s), the project sponsors shall be entitled to a refund in that amount from the BAAQMD. To qualify under this mitigation measure, the specific emissions retrofit project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements.		or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date. Offsets for subsequent phases/build-out: Upon completion of construction of each subsequent phase, and prior to issuance of a Certificate of Occupancy for the final building associated with such phase, developer shall demonstrate to the satisfaction of Port Staff that offsets			

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		have been funded or implemented, or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date and taking into account offsets previously funded, implemented, and/or purchased.			
Wind and Shadow Mitigation Measures					
Mitigation Measure M-WS-1: Identification and Mitigation of Interim Hazardous Wind Impacts When the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted, the requirements described below apply: **Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies**	Project sponsors, qualified wind consultant.	As outlined in Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies, a wind impact analysis shall be	Qualified wind consultant to prepare a scope of work to be approved by Port Staff and following approval of a scope of work submit a wind impact analysis to Port Staff for approval	Considered complete upon approval or issuance of building permit.	Port

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(see table below)		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.		

Subject Parcel Proposed for Construction	Circumstance or Condition	Related Upwind Parcels
Parcel A	Construction of any new buildings on Parcel A.	NA
Parcel B	Construction of any new buildings on Parcel B.	NA
Parcel E2	Construction of any new buildings on Parcel E2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1 and G
Parcel E3	Construction of any new buildings on Parcel E3 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building	Parcels E2 and G

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	Schematic Design submittal.						
Parcel F	Construction of any new buildings on Parcel F.	NA					
Parcel G	Construction of any new buildings on Parcel G.	NA					
Parcel H1	Construction of any new buildings on Parcel H1 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels E2 and G					
Parcel H2	Construction of any new buildings on Parcel H2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1, E2, and E3 that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1, E2, and E3					

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Source: SWCA. **<u>Requirements</u>** A wind impact analysis shall be required prior to building permit issuance for any proposed new building that is located within the project site and meets the conditions described above.. All feasible means (e.g., changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, adding architectural canopies or screens, or street furniture) to eliminate hazardous winds, if predicted, shall be implemented. After such design changes and features have been considered, the additional effectiveness of landscaping may also be considered. 1. <u>Screening-level analysis</u>. A qualified wind consultant approved by Port Staff shall review the proposed building design and conduct a "desktop review" in order to provide a qualitative result determining whether there could be a wind hazard. The screening-level analysis shall have the following steps: For each new building proposed that meets the criteria above, a qualified wind consultant shall review and compare the exposure, massing, and orientation of the proposed building(s) on the subject parcel to the building(s) on the same parcel in the representative massing models of the Proposed Project tested in the wind tunnel as part of this EIR and in any subsequent wind analysis testing required by this mitigation measure. The wind consultant shall identify and compare the potential impacts of the proposed building(s) to those identified in this EIR, subsequent wind testing that may have occurred under this mitigation measure, and to the City's wind hazard criterion. The wind consultant's analysis and evaluation shall consider the proposed building(s) in the context of the "Current Project Baseline," which, at any given time during construction of the Proposed Project, shall be defined as any existing buildings at the site, the as-built designs of all previously-completed structures and the then-current designs of					

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approved but yet unbuilt structures that would be completed by the time of occupancy of the subject building. (a) If the qualified wind consultant concludes that the building design(s) could not create a new wind hazard and could not contribute to a wind hazard identified by prior wind tunnel testing for the EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If there could be a new wind hazard, then a quantitative assessment shall be conducted using wind tunnel testing or an equivalent quantitative analysis that produces comparable results to the analysis methodology used in this EIR. (b) If the qualified wind consultant concludes that the building design(s) could create a new wind hazard or could contribute to a wind hazard identified by prior wind tunnel testing conducted for this EIR and in subsequent wind analysis, required by this mitigation measure, but in the consultant's professional judgment the building(s) can be modified to reduce such impact to a less-than-significant level, the consultant shall notify Port Staff and the building applicant. The consultant's professional judgment may be informed by the use of "desktop" analytical tools, such as computer tools relying on results of prior wind tunnel testing for the Proposed Project and other projects (i.e., "desktop" analysis does not include new wind tunnel testing). The analysis shall include consideration of wind location, duration, and speed of wind. The building applicant may then propose changes or supplements to the design of the proposed building(s) to achieve this result. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting to include podiums and roof terraces, and/or the addition of architectural canopies or screens, or					

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street furniture. The effectiveness of landscaping may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design and landscaping for the building(s) could not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required.					
(c) If the consultant is unable to demonstrate to the satisfaction of Port Staff that no increase in wind hazards would occur, wind tunnel testing or an equivalent method of quantitative evaluation producing results that can be compared to those used in the EIR and in any subsequent wind analysis testing required by this mitigation measure is required. The building(s) shall be wind tunnel tested in the context of a model that represents the Current Project Baseline, as described in Item 1, above. The testing shall include all the test points in the vicinity of a proposed building or group of buildings that were tested in this EIR, as well as all additional points deemed appropriate by the consultant to determine the wind performance for the building(s). Testing shall occur in places identified as important, e.g., building entrances, sidewalks, etc., and there may need to be additional test point locations considered. At the direction and approval of the Port, the "vicinity" shall be determined by the wind consultant, as appropriate for the circumstances, e.g., a starting concept for "vicinity" could be approximately 350 feet around the perimeter of the subject parcel(s), subject to the wind consultant's reducing or increasing this radial distance. The wind tunnel testing shall test the proposed building design(s), as well as the Current Project Baseline, in					

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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order to clearly identify those differences that would be due to the proposed new building(s). In the event the wind tunnel testing determines that design of the building(s) would increase the hours of wind hazard or extent of area subject to hazardous winds beyond those identified in prior wind testing conducted for this EIR and in subsequent wind tunnel analysis required by this mitigation measure, the wind consultant shall notify Port Staff and the building applicant. The building applicant may then propose changes or supplements to the design of the proposed building(s) to eliminate wind hazards. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting building(s) to include podiums and roof terraces, adding architectural canopies or screens, or street furniture. All feasible means (changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, the addition of architectural canopies or screens, or street furniture) to eliminate wind hazards, if predicted, shall be implemented to the extent necessary to mitigate the impact. After such design changes and features have been considered, the additional effectiveness of landscaping at the size it is proposed to be installed may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design would not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If the proposed building(s) would result in a wind hazard exceedance, and the only way to eliminate the hazard is to redesign a proposed building, then the building shall be redesigned.					

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Mitigation Measure M-WS-2: Wind Reduction for Rooftop Winds If the rooftop of building(s) is proposed as public open space and/or a passive or active public recreational area prior to issuance of a building permit for the subject building(s), a qualified wind consultant shall prepare a wind impact and mitigation analysis in the context of the Current Project Baseline regarding the proposed architectural design. All feasible means (such as changing the proposed building mass or design; raising the height of the parapets to at least 8 feet, using a porous material where such material would be effective in reducing wind speeds; using localized wind screens, canopies, trellises, and/or landscaping around seating areas) to eliminate wind hazards shall be implemented as necessary. A significant wind impact would be an increase in the number of hours that the wind hazard criterion is exceeded or an increase in the area subjected to winds exceeding the hazard criterion as compared to existing conditions at the height of the proposed rooftop. The wind consultant shall demonstrate to the satisfaction of Port Staff that the building design would not create a new wind hazard or contribute to a wind hazard identified in prior wind testing conducted for this EIR.	Project Sponsors and qualified wind consultant.	Prior to issuance of a building permit for a building with a rooftop proposed as public open space and/or passive/active recreational area, the qualified wind consultant shall demonstrate that no new wind hazards or a contribution to a wind hazard identified in the EIR would occur in a wind hazard and mitigation analysis.	Port Staff to review wind hazard and mitigation analysis.	Considered complete upon approval or issuance of building permit	Port
Biological Resources Mitigation Measures					
Mitigation Measure M-BI-1a: Worker Environmental Awareness Program Training Project-specific Worker Environmental Awareness Program (WEAP) training shall be developed and implemented by a qualified biologist* and attended by all project personnel performing demolition or ground-disturbing work prior to beginning demolition or ground-disturbing work on site for	Project sponsors and qualified project biologist.	Prior to demolition or ground-disturbing activities.	Port staff to review and approve WEAP training. Project sponsors and qualified biological consultant to document WEAP	Considered complete after Port staff reviews and approves WEAP training, and confirm	Port or Planning Department

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each construction phase. The WEAP training shall include, but not be limited to, education about the following: a. Applicable State and Federal laws, environmental regulations, project permit conditions, and penalties for non-compliance. b. Special-status plant and animal species with the potential to be encountered on or in the vicinity of the project site during construction. c. Avoidance measures and a protocol for encountering special-status species including a communication chain. d. Preconstruction surveys and biological monitoring requirements associated with each phase of work and at specific locations within the project site (e.g., shoreline work) as biological resources and protection measures will vary depending on where work is occurring within the site, time of year, and construction activity. e. Known sensitive resource areas in the project vicinity that are to be avoided and/or protected as well as approved project work areas, access roads, and staging areas. Best management practices (BMPs) (e.g., straw wattles or spill kits) and their location around the project site for erosion control and species exclusion, in addition to general housekeeping requirements. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.			training and provide documentation during annual mitigation report to the Port.	compliance in annual mitigation report.	
Mitigation Measure M-BI-1b: Nesting Bird Protection Measures The project site's proximity to San Francisco Bay and its current lack of	Project sponsors, qualified biological consultant.	Prior to issuance of demolition or building	If construction will occur during nesting season, qualified biological consultant to	Considered complete upon issuance of demolition or	Port or Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
activity result in a more attractive environment for birds to nest than other San Francisco locations (e.g., the Financial District) that have higher levels of site activity and human presence. Nesting birds and their nests shall be protected during construction by implementation of the following measures for each construction phase: a. To the extent feasible, conduct initial activities including, but not limited to, vegetation removal, tree trimming or removal, ground disturbance, building demolition, site grading, and other construction activities which may compromise breeding birds or the success of their nests (e.g., CRF, rock drilling, rock crushing, or pile driving), outside of the nesting season (January 15–August 15). b. If construction during the bird nesting season cannot be fully avoided, a qualified wildlife biologist* shall conduct pre-construction nesting surveys within 14 days prior to the start of construction or demolition at areas that have not been previously disturbed by project activities or after any construction breaks of 14 days or more. Surveys shall be performed for suitable habitat within 250 feet of the project site in order to locate any active passerine (perching bird) nests and within 500 feet of the project site to locate any active raptor (birds of prey) nests, waterbird nesting pairs, or colonies. c. If active nests are located during the preconstruction bird nesting surveys, a qualified biologist shall evaluate if the schedule of construction activities could affect the active nests and if so, the following measures would apply: i. If construction is not likely to affect the active nest, construction may proceed without restriction; however, a qualified biologist shall regularly monitor the nest at a frequency determined appropriate for the surrounding construction activity to confirm there is no adverse effect. Spot-check monitoring frequency		permits for construction during the nesting season <u>(January 15 to August 15)</u> ~~(August 16 – January 14)~~	conduct bat surveys and present results to Port Staff	building permits for construction	

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would be determined on a nest-by-nest basis considering the particular construction activity, duration, proximity to the nest, and physical barriers which may screen activity from the nest. The qualified biologist may revise his/her determination at any time during the nesting season in coordination with the Port of San Francisco or Planning Department. ii. If it is determined that construction may affect the active nest, the qualified biologist shall establish a no-disturbance buffer around the nest(s) and all project work shall halt within the buffer until a qualified biologist determines the nest is no longer in use. Typically, these buffer distances are 250 feet for passerines and 500 feet for raptors; however, the buffers may be adjusted if an obstruction, such as a building, is within line-of-sight between the nest and construction. iii. Modifying nest buffer distances, allowing certain construction activities within the buffer, and/or modifying construction methods in proximity to active nests shall be done at the discretion of the qualified biologist and in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Necessary actions to remove or relocate an active nest(s) shall be coordinated with the Port of San Francisco or Planning Department and approved by CDFW. iv. Any work that must occur within established no-disturbance buffers around active nests shall be monitored by a qualified biologist. If adverse effects in response to project work within the buffer are					

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observed and could compromise the nest, work within the no-disturbance buffer(s) shall halt until the nest occupants have fledged. v. Any birds that begin nesting within the project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels, so exclusion zones around nests may be reduced or eliminated in these cases as determined by the qualified biologist in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Work may proceed around these active nests as long as the nests and their occupants are not directly impacted. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-2: Avoidance and Minimization Measures for Bats A qualified biologist (as defined by CDFW*) who is experienced with bat surveying techniques (including auditory sampling methods), behavior, roosting habitat, and identification of local bat species shall be consulted prior to demolition or building relocation activities to conduct a pre-construction habitat assessment of the project site (focusing on buildings to be demolished or relocated) to characterize potential bat habitat and identify potentially active roost sites. No further action is required should the pre-construction habitat assessment not identify bat habitat or signs of potentially active bat roosts within the project site (e.g., guano, urine staining, dead bats, etc.).	Project sponsors, qualified biological consultant, and CDFW.	Prior to issuance of demolition or building permits when trees or shrubs would be removed or buildings demolished as part of an individual project.	Qualified biological consultant to conduct bat surveys and present results to Port Staff.	Considered complete upon issuance of demolition or building permits.	Port or Planning Department

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The following measures shall be implemented should potential roosting habitat or potentially active bat roosts be identified during the habitat assessment in buildings to be demolished or relocated under the Proposed Project or in trees adjacent to construction activities that could be trimmed or removed under the Proposed Project: a) In areas identified as potential roosting habitat during the habitat assessment, initial building demolition, relocation, and any tree work (trimming or removal) shall occur when bats are active, approximately between the periods of March 1 to April 15 and August 15 to October 15, to the extent feasible. These dates avoid the bat maternity roosting season and period of winter torpor. [Torpor refers to a state of decreased physiological activity with reduced body temperature and metabolic rate.] b) Depending on temporal guidance as defined below, the qualified biologist shall conduct pre-construction surveys of potential bat roost sites identified during the initial habitat assessment no more than 14 days prior to building demolition or relocation, or any tree trimming or removal. c) If active bat roosts or evidence of roosting is identified during pre-construction surveys, the qualified biologist shall determine, if possible, the type of roost and species. A no-disturbance buffer shall be established around roost sites until the qualified biologist determines they are no longer active. The size of the no-disturbance buffer would be determined by the qualified biologist and would depend on the species present, roost type, existing screening around the roost site (such as dense vegetation or a building), as well as the type of construction activity that would occur around the roost site. d) If special-status bat species or maternity or hibernation roosts are detected during these surveys, appropriate species- and roost-specific avoidance and protection measures shall be					

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developed by the qualified biologist in coordination with CDFW. Such measures may include postponing the removal of buildings or structures, establishing exclusionary work buffers while the roost is active (e.g., 100-foot no-disturbance buffer), or other compensatory mitigation. e) The qualified biologist shall be present during building demolition, relocation, or tree work if potential bat roosting habitat or active bat roosts are present. Buildings and trees with active roosts shall be disturbed only under clear weather conditions when precipitation is not forecast for three days and when daytime temperatures are at least 50 degrees Fahrenheit. f) The demolition or relocation of buildings containing or suspected to contain bat roosting habitat or active bat roosts shall be done under the supervision of the qualified biologist. When appropriate, buildings shall be partially dismantled to significantly change the roost conditions, causing bats to abandon and not return to the roost, likely in the evening and after bats have emerged from the roost to forage. Under no circumstances shall active maternity roosts be disturbed until the roost disbands at the completion of the maternity roosting season or otherwise becomes inactive, as determined by the qualified biologist. g) Trimming or removal of existing trees with potential bat roosting habitat or active (non-maternity or hibernation) bat roost sites shall follow a two-step removal process (which shall occur during the time of year when bats are active, according to a) above, and depending on the type of roost and species present, according to c) above). i. On the first day and under supervision of the qualified biologist, tree branches and limbs not containing cavities or fissures in which bats could roost shall be cut using chainsaws.					

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ii. On the following day and under the supervision of the qualified biologist, the remainder of the tree may be trimmed or removed, either using chainsaws or other equipment (e.g., excavator or backhoe). All felled trees shall remain on the ground for at least 24 hours prior to chipping, off-site removal, or other processing to allow any bats to escape, or be inspected once felled by the qualified biologist to ensure no bats remain within the tree and/or branches. iv. * CDFW defines credentials of a "qualified biologist" within permits or authorizations issued for a project. Typical qualifications include a minimum of five years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-3: Pile Driving Noise Reduction for Protection of Fish and Marine Mammals Prior to the start of reconstruction of the bulkhead in Reach II, the project sponsors shall prepare a detailed Construction Plan that outlines the details of the piling installation approach. This Plan shall be reviewed and approved by Port Staff. The information provided in this plan shall include, but not be limited to, the following: • The type of piling to be used (whether sheet pile or H-pile); • The piling size to be used; • The method of pile installation to be used; • Noise levels for the type of piling to be used and the method of pile driving; • Recalculation of potential underwater noise levels that could be generated during pile driving using methodologies outlined in	Project sponsors.	Prior to construction of the bulkhead in Reach II, project sponsors to prepare a Construction Plan.	Project sponsors to prepare a Construction Plan and submit it to the Port for review and approval. If determined necessary, sound attenuation and monitoring plan would then be developed. Results of the vibration monitoring would be provided to NOAA if required. An alternative to the sound	Considered complete upon review and approval of the Construction Plan. If determined necessary, approval of the sound attenuation and monitoring plan would be required by Port Staff, and monitoring results would be provided to	Port

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CalTrans 2009 [Caltrans, Technical Guidance for Assessment and Mitigation]; and • When pile driving is to occur. If the results of the recalculations provided in the detailed Construction Plan for pile driving discussed above indicate that underwater noise levels are less than 183 dB (SEL) for fish at a distance of 33 feet (less than or equal to 10 meters) and 160 dB (RMS) sound pressure level or 120 dB (RMS) re 1 µPa impulse noise level for marine mammals for a distance 1,640 feet (500 meters), then no further measures are required to mitigate underwater noise. If recalculated noise levels are greater than those identified above, then the project sponsors shall develop a sound attenuation reduction and monitoring plan. This plan shall be reviewed and approved by Port Staff. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile-driving activities, and all BMPs to be taken to reduce impact hammer pile-driving sound in the marine environment to an intensity level of less than 183 and 160/120 dB (as identified above) at distances of 33 feet (less than or equal to 10 meters) for fish and 1,640 feet (500 meters) for marine mammals. The sound-monitoring results shall be made available to NOAA Fisheries. If, in the case of marine mammals, recalculated noise levels are greater than 160 dB (peak) at less than or equal to 1,640 feet (500 meters), then the project sponsors shall consult with NOAA to determine the need to obtain an Incidental Harassment Authorization (IHA) under the MMPA. If an IHA is required by NOAA, an application for an IHA shall be prepared by the project sponsors. The plan shall incorporate as appropriate, but not be limited to, the following BMPs: • Any impact-hammer-installed soldier wall H-pilings or sheet piling shall be conducted in strict accordance with the Long-Term Management Strategy (LTMS) work windows for Pacific herring,* during which the presence of Pacific herring in the project site is			attenuation and monitoring plan is to consult with NOAA and provide evidence to the satisfaction of Port Staff.	NOAA.	

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expected to be minimal unless, where applicable, NOAA Fisheries in their Section 7 consultation with the Corps determines that the potential effect to special-status fish species is less than significant. • If pile installation using impact hammers must occur at times other than the approved LTMS work window for Pacific herring or result in underwater sound levels greater than those identified above, the project sponsors shall consult with both NOAA Fisheries and CDFW on the need to obtain incidental take authorizations to address potential impacts to longfin smelt and green sturgeon associated with reconstruction of the steel sheet pile bulkhead in Reach II, and to implement all requested actions to avoid impacts. • A 1,640-foot (500-meter) safety zone shall be established and maintained around the sound source to the extent such a safety zone is located within in-water areas, for the protection of marine mammals in the event that sound levels are unknown or cannot be adequately predicted. • In-water work activities associated with reconstruction of the steel sheet pile bulkhead in Reach II shall be halted when a marine mammal enters the 1,640-foot (500-meter) safety zone and shall cease until the mammal has been gone from the area for a minimum of 15 minutes. • A "soft start" technique shall be used in all pile driving, giving marine mammals an opportunity to vacate the area. • A NOAA Fisheries-approved biological monitor shall conduct daily surveys before and during impact hammer pile driving to inspect the safety zone and adjacent San Francisco Bay waters for marine mammals. The monitor shall be present as specified by NOAA Fisheries during the impact pile-driving phases of construction.					

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• Other BMPs shall be implemented as necessary, such as using bubble curtains or an air barrier, to reduce underwater noise levels to acceptable levels. Alternatively, the project sponsors may consult with NOAA directly and submit evidence to their satisfaction of Port Staff of NOAA consultation. In such case, the project sponsors shall comply with NOAA recommendations and/or requirements. * U.S. Army Corps of Engineers, Programmatic Essential Fish Habitat (EFH) Assessment for the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region. July 2009.					
Mitigation Measure M-BI-4: Compensation for Fill of Jurisdictional Waters To offset temporary and/or permanent impacts to jurisdictional waters of San Francisco Bay adjacent to the 28-Acre Site, construction associated with repair or replacement of the Reach II bulkhead shall be conducted as required by regulatory permits (i.e., those issued by the Corps, RWQCB, and BCDC) and in coordination with NMFS as appropriate. If required by regulatory permits, compensatory mitigation shall be provided as necessary, at a minimum ratio of 1:1 for fill beyond that required for normal repair and maintenance of existing structures. Compensation may include on-site or off-site shoreline improvements or intertidal/subtidal habitat enhancements along San Francisco's eastern waterfront through removal of chemically treated wood material (e.g., pilings, decking, etc.) by pulling, cutting, or breaking off piles at least 1 foot below mudline or removal of other unengineered debris (e.g., concrete-filled drums or large pieces of concrete). Improvements would be implemented in accordance with NMFS as appropriate. On-site or off-site restoration/enhancement plans, if required, must be prepared by a qualified biologist prior to construction and approved by the permitting agencies prior to beginning construction, repair, or	Project sponsors. In accordance with regulatory permits and coordination with NMFS, compensatory mitigation, if required, shall be provided at a minimum ratio of 1:1.	Prior to any construction at the Reach II bulkhead or in accordance with regulatory permits.	Project sponsors to comply with regulatory permits	Considered complete after issuance of regulatory permits for the fill of jurisdictional waters.	Port

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replacement of the Reach II bulkhead. Implementation of restoration/enhancement activities by the permittee shall occur prior to project impacts, whenever possible.					
Geology and Soils Mitigation Measures					
Mitigation Measure M-GE-3a: Reduction of Rock Fall Hazards The project sponsors shall prepare a site-specific geotechnical report(s), subject to review and approval by the Port, that evaluates the design and construction methods proposed for Parcels PKS, C-1, and C-2, the Irish Hill playground, and 21st Street. The investigations shall determine the potential for rock fall hazards. If the potential for rock fall hazards is identified, the site-specific geotechnical investigations shall identify measures to minimize such hazards to be implemented by the project sponsors. Possible measures to reduce the impacts of potential rock fall hazards include, but are not limited to, the following: • Limited regrading to adjust slopes to stable gradient; • Rock fall containment measures such as installation of drape nets, rock fall catchment fences, or diversion dams; and • Site design measures such as implementing setbacks to ensure that buildings and public uses are outside areas that could be subject to damage as a result of rock fall.	Project sponsors.	Prior to the start of construction activities at Parcels PKS, C-1, C-2, the Irish Hill playground, and 21st Street.	Project sponsors to submit geotechnical report(s) to the Port for review and approval.	Considered complete upon approval of geotechnical report(s) and any associated measures to minimize rock fall hazards.	Port
Mitigation Measure M-GE-3b: Signage and Restricted Access to Pier 70 Prior to issuance of the first certificate of occupancy under the Proposed Project, the project sponsors shall install a gate or an equivalent measure to prevent access to the existing dilapidated pier at the project site. A sign shall be posted at the potential access point informing the public of potential risks associated with use of the structure and prohibiting public access.	Project sponsors to install signage and gate or equivalent measure to prevent access to the existing dilapidated pier.	Prior to issuance of the first Certificate of Occupancy.	Project sponsors to document installation of signage and gate or equivalent measure	Considered complete upon installation of the signage and gate or equivalent measure. The measure will be documented in the annual	Port

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				mitigation and monitoring report.	
Mitigation Measure M-GE-6: Paleontological Resources Monitoring and Mitigation Program Prior to issuance of a building permit for construction activities that would disturb sedimentary rocks of the Franciscan Complex (based on the site-specific geotechnical investigation or other available information), the project sponsors shall retain the services of a qualified paleontological consultant having expertise in California paleontology to design and implement a Paleontological Resources Monitoring and Mitigation Program (PRMMP). The PRMMP shall specify the timing and specific locations where construction monitoring would be required; emergency discovery procedures; sampling and data recovery procedures; procedures for the preparation, identification, analysis, and curation of fossil specimens and data recovered; preconstruction coordination procedures; and procedures for reporting the results of the monitoring program. The PRMMP shall be consistent with the Society for Vertebrate Paleontology (SVP) Standard Guidelines for the mitigation of construction-related adverse impacts to paleontological resources and the requirements of the designated repository for any fossils collected. During construction, earth-moving activities that have the potential to disturb previously undisturbed native sediment or sedimentary rocks shall be monitored by a qualified paleontological consultant having expertise in California paleontology. Monitoring need not be conducted for construction activities in areas where the ground has been previously disturbed or when construction activities would encounter artificial fill, Young Bay Mud, marsh deposits, or non-sedimentary rocks of the Franciscan Complex. If a paleontological resource is discovered, construction activities in an appropriate buffer around the discovery site shall be suspended for a maximum of 4 weeks. At the direction of the Environmental Review Officer	Project sponsors and qualified paleontological consultant.	Prior to issuance of a building permit where construction activities would disturb sedimentary rocks of the Franciscan complex. If earth-moving activities have the potential to disturb previously undisturbed native sediment, a qualified paleontological consultant would monitor the activities.	Qualified paleontological consultant to prepare a PRMMP for review and approval by the ERO A single PRMMP or multiple PRMMPs may be produced to address project phasing. In compliance with the requirements of the PRMMP, a qualified paleontological consultant would monitor construction and provide a monitoring report for inclusion in the annual mitigation and monitoring report.	Considered complete upon documentation to the satisfaction of that building permit construction activities would not disturb sedimentary rocks of the Franciscan Complex, or review and approval of the PRMMP. if required, by the Planning Department. Monitoring activities and compliance would be documented in the annual mitigation and monitoring report.	Port and Planning Department

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(ERO), the suspension of construction can be extended beyond 4 weeks if needed to implement appropriate measures in accordance with the PRMMP, but only if such a suspension is the only feasible means to prevent an adverse impact on the paleontological resource. The paleontological consultant's work shall be conducted at the direction of the City's ERO. Plans and reports prepared by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.					
Hydrology and Water Resources Mitigation Measures					
Mitigation Measure M-HY-2a: Design and Construction of Proposed Pump Station for Options 1 and 3 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline, the Proposed Project at full build-out, and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to	Project sponsors.	Prior to construction of the proposed pump station for Options 1 and 3.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC

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approval by the SFPUC.					
Mitigation Measure M-HY-2b: Design and Construction of Proposed Pump Station for Option 2 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; • During wet weather, wastewater flows from the project site shall bypass the wet-weather facilities and be conveyed to the combined sewer system in such a manner that they do not contribute to combined sewer discharges within the 20th Street sub-basin; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to approval by the SFPUC.	Project sponsors.	Prior to construction of the proposed pump station for Option 2.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC
Hazards and Hazardous Materials Mitigation Measures					
Mitigation Measure M-HZ-2a: Conduct Transformer Survey and Remove PCB Transformers	Project sponsors and qualified contractor.	Prior to the demolition, renovation, or	Qualified contractor to survey and determine the	Considered complete if no PCBs found or	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
The project sponsors shall retain a qualified contractor to survey any building and/or structure planned for demolition, renovation, or relocation to identify all electrical transformers in use and in storage. The contractor shall determine the PCB content using name plate information, or through sampling if name-plate data do not provide adequate information regarding the PCB content of the dielectric equipment. The project sponsors shall retain a qualified contractor to remove and dispose of all transformers in accordance with the requirements of Title 40 of the Code of Federal Regulations, Section 761.60 (described under the Regulatory Framework) and the Title 22 of the California Code of Regulations, Section 66261.24. The removal shall be completed in advance of any building or structural demolition, renovation, or relocation.		relocation of any building and/or structure.	PCB content of transformers in use and storage. If necessary, the contractor shall remove and dispose of transformers in accordance with applicable regulations.	upon appropriate disposal and removal of transformers. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	
Mitigation Measure M-HZ-2b: Conduct Sampling and Cleanup if Stained Building Materials Are Observed In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB (determined in accordance with Mitigation Measure H-HZ-2a), or the leakage has resulted in visible staining of the building materials or surrounding surface areas, the project sponsors shall retain a qualified professional to obtain samples of the building materials for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration of 1 part per million, then the project sponsors shall retain a contractor to clean the surface to a concentration of 1 part per million or less in accordance with Title 40 of the Code of Federal Regulations, Section 761.61(a). The sampling and cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB, or the leakage has resulted in visible staining of the building materials or surrounding surface areas. If determined necessary, sampling and	If leakage or spillage occurs, qualified contractor to obtain samples and clean the surface (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
		cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.			
Mitigation Measure M-HZ-2c: Conduct Soil Sampling if Stained Soil is Observed In the event that leakage is observed in the vicinity of a PCB-containing transformer that has resulted in visible staining of the surrounding soil (determined in accordance with Mitigation Measure M-HZ-2a), the project sponsors shall retain a qualified professional to obtain soil samples for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration less than the residential Environmental Screening Level of 0.22 milligrams per kilogram, then no further action shall be required. If PCBs are identified at a concentration greater than or equal to the residential Environmental Screening Level of 0.22 milligrams per kilogram, then the project sponsors shall require the contractor to implement the requirements of the Pier 70 RMP, as required by Mitigation Measure M-HZ-6. The sampling and implementation of the Pier 70 RMP requirements shall be completed in advance of any building or structural demolition, renovation, relocation, or subsequent development.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer, or the leakage has resulted in visible staining of soils. If determined necessary, sampling and removal shall be completed in advance of any building or structural demolition, renovation, or relocation.	If leakage or spillage occurs, qualified contractor to obtain samples and remove any PCBs (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented hazardous materials manifestos and in the annual mitigation and monitoring report.	Port
Mitigation Measure M-HZ-3a: Implement Construction and Maintenance-Related Measures of the Pier 70 Risk Management Plan The project sponsors shall provide notice to the RWQCB, DPH, and Port in accordance with the Pier 70 RMP, in advance of ground-disturbing activities	Project sponsors and construction contractor(s).	Notice shall be provided to the RWQCB, DPH, and Port in accordance	All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB,	Considered complete upon notice to the RWQCB, DPH, and Port.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]

that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover (Pier 70 RMP Sections 4.1, 4.2, and 6.3).
 	
The project sponsors shall also (through their contractor) implement the following measures of the Pier 70 RMP during construction to provide for the protection of worker and public health, including nearby schools and other sensitive receptors, and to ensure appropriate disposition of soil and groundwater removed from the site:
 	
• A project-specific health and safety plan (Pier 70 RMP Section 6.4);
• Access controls (Pier 70 RMP Section 6.1);
• Soil management protocols, including those for:
  o soil movement (Pier 70 RMP Section 6.5.1),
  o soil stockpile management (Pier 70 RMP Section 6.5.2), and
  o import of clean soil (including preparation of a project-specific Soil Import Plan) (Pier 70 RMP Section 6.5.3);
• A dust control plan in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code and other applicable regulations as well as site-specific measures (Pier 70 RMP Section 6.6);
• A project-specific stormwater pollution prevention control plan (Pier 70 RMP Section 6.7);
• Off-site soil disposal (Pier 70 RMP Section 6.8);
		with the Pier 70 RMP prior to any ground-disturbing activities that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover.	DPH, and Port for review and approval in accordance with the notification requirements of the RMP.		

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
• A project-specific groundwater management plan for temporary dewatering (Pier 70 RMP Section 6.10.1); • Risk management measures to minimize the potential for new utilities to become conduits for the spread of groundwater contamination (Pier 70 RMP Section 6.10.2); • Appropriate design of underground pipelines to prevent the intrusion of groundwater or degradation of pipeline construction materials by chemicals in the soil or groundwater (Pier 70 RMP Section 6.10.3): and • Protocols for unforeseen conditions (Pier 70 RMP Section 6.9). Following completion of construction activities that disturb any durable cover, the integrity of the previously existing durable cover shall be re-established in accordance with Section 6.2 of the Pier 70 RMP and the protocols described in the Operations and Maintenance Plan of the Pier 70 RMP. All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB. DPH, and/or Port for review and approval in accordance with the notification requirements of the RMP (Pier 70 RMP Section 4.0).					
Mitigation Measure M-HZ-3b: Implement Well Protection Requirements of the Pier 70 Risk Management Plan In accordance with Section 6.11 of the Pier 70 RMP, the project sponsors shall review available information prior to any ground-disturbing activities to identify any monitoring wells within the construction area, including any wells installed by PG&E in support of investigation and remediation of the PG&E Responsibility Area within the 28-Acre Site. The wells shall be appropriately protected during construction. If construction necessitates destruction of an existing well, the destruction shall be conducted in accordance with California and DPH well abandonment regulations, and	Project sponsors	Prior to ground-disturbing activities.	Project sponsors to identify any monitoring wells in the area, and appropriately protect them. If destruction of a well is required, it would be conducted in accordance with	Monitoring complete if no wells or activities would be demonstrated in RWQCB and DPH regulatory applications and documented in the annual mitigation and	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
must be approved by the RWQCB. The Port shall also be notified of the destruction. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.			applicable regulations and the Port would be notified. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.	monitoring report.	
Mitigation Measure M-HZ-4: Implement Construction-Related Measures of the Hoedown Yard Site Management Plan In accordance with the notification requirements of the Hoedown Yard SMP (Section 4.2), the project sponsors (through their contractor) shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard. During construction, the contractor shall implement the following measures of the Hoedown Yard SMP to provide for the protection of worker and public health, and to ensure appropriate disposition of soil and groundwater. • A project-specific Health and Safety Plan (Hoedown Yard SMP Section 5): o Dust management measures in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code. The specific measures must address	Project sponsors	Prior to ground-disturbing activities at the Hoedown Yard.	The project sponsors shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard.	Considered complete after notification to the RWQCB, DPH, and/or Port.	DPH

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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dust control (SMP Section 6.1) and dust monitoring (SMP Section 6.2). • Soil and water management measures, including: o soil handling (Hoedown Yard SMP Section 7.1.1), o stockpile management (Hoedown Yard SMP Section 7.1.2), o on-site reuse of soil (Hoedown Yard SMP Section 7.1.3), o off-site soil disposal (Hoedown Yard SMP Section 7.1.4), o excavation dewatering (Hoedown Yard SMP Section 7.1.5). o stormwater management (Hoedown Yard SMP Section 7.1.6), o site access and security (Hoedown Yard SMP Section 7.1.7), and o unanticipated subsurface conditions (Hoedown Yard SMP Section 7.2).					
Mitigation Measure M-HZ-5: Delay Development on Proposed Parcels H1, H2, and E3 Until Remediation of the PG&E Responsibility Area is Complete The project sponsors shall not start construction of the proposed development or associated infrastructure on proposed Parcel H1, H2, and E3 until PG&E's remedial activities in the PG&E Responsibility Area within and adjacent to these parcels have been completed to the satisfaction of the RWQCB, consistent with the terms of the remedial action plan prepared by PG&E and approved by RWQCB. During subsequent development, the project sponsors shall implement the requirements of the Pier 70 RMP within the PG&E Responsibility Area, as enforced through the recorded deed restriction on the Pier 70 Master Plan Area.	Project sponsors and PG&E.	Prior to the start of construction on proposed Parcels H1, H2, and E3. During subsequent development, for implementation of Pier 70 RMP Requirements.	PG&E to complete remedial activities in the PG&E Responsibility Area within and adjacent to Parcels H1, H2, and E3 to satisfaction of RWQCB. Project sponsor to implement Pier 70 RMP requirements, enforced by recorded deed	Considered complete upon RWQCB confirmation of satisfaction with PG&E remedial action.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
			restriction.		
Mitigation Measure M-HZ-6: Additional Risk Evaluations and Vapor Control Measures for Residential Land Uses The notification submittals required under Mitigation Measure M-HZ-3a shall describe site conditions at the time of development. If residential land uses are proposed at or near locations where soil vapor or groundwater concentrations exceed residential cleanup standards for vapor intrusion (based on information provided in the Pier 70 RMP), this information shall be included in the notification submittal and the RWQCB and DPH determine whether a risk evaluation is required. If required, the project sponsors or future developer(s) shall conduct a risk evaluation in accordance with the Pier 70 RMP. The risk evaluation shall be based on the soil vapor and groundwater quality presented in the Pier 70 RMP and the proposed building design. The project sponsors shall conduct additional soil vapor or groundwater sampling as needed to support the risk evaluation, subject to the approval of the RWQCB and DPH. If the risk evaluation demonstrates that there would be unacceptable health risks to residential users (i.e., greater than 1×10^{-6} incremental cancer risk or a non-cancer hazard index greater than 1), the project sponsors shall incorporate measures into the building design to minimize or eliminate exposure to soil vapor through the vapor intrusion pathway, subject to review and approval by the RWQCB and DPH. Appropriate vapor intrusion measures include, but are not limited to design of a safe building configuration that would preclude vapor intrusion; installation of a vapor barrier; and/or design and installation of an active vapor monitoring and extraction system. If the risk evaluation demonstrates that vapor intrusion risks would be within acceptable levels (less than 1×10^{-6} incremental cancer risk or a non-cancer hazard index less than 1) under a project-specific development scenario, no additional action shall be required. (For instance, the project sponsors could locate all residential uses above the first floor which, in some cases, could eliminate the potential for residential exposure to organic compounds in soil	Project sponsors	Prior to ground-disturbing activities of residential land uses if near locations where soil vapor or groundwater concentrations exceed residential cleanup standard for vapor intrusion.	Site conditions shall be recorded by the project sponsors and included in the notification submittal to the RWQCB and DPH. If required, the project sponsors shall conduct a risk evaluation in accordance with the Pier 70 RMP and incorporate measures to minimize or eliminate exposure to soil vapor.	Considered complete upon a notification submittal to the RWQCB and DPH. If a risk evaluation and further measures are required, they would be reviewed and approved by the RWQCB and DPH.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
vapors.)					
Mitigation Measure M-HZ-7: Modify Hoedown Yard Site Mitigation Plan The project sponsors shall conduct a risk evaluation to evaluate health risks to future site occupants, visitors, and maintenance workers under the proposed land use within the Hoedown Yard. The risk evaluation shall be based on the soil, soil vapor, and groundwater quality data provided in the existing SMP and supporting documents and the project sponsors shall conduct additional sampling as needed to support the risk evaluation. Based on the results of the risk evaluation, the project sponsors shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals (i.e., an excess cancer risk of 1×10^{-6} and a Hazard Index of 1) applicable to each land use proposed for development within the Hoedown Yard. At a minimum, the modified SMP shall include the following components: • Regulatory-approved cleanup levels for the proposed land uses; • A description of existing conditions, including a comparison of site data to regulatory-approved cleanup levels; • Regulatory oversight responsibilities and notification requirements; • Post-development risk management measures, including management measures for the maintenance of engineering controls (e.g., durable covers, vapor mitigation systems) and site maintenance activities that could encounter contaminated soil; • Monitoring and reporting requirements; and • An operations and maintenance plan, including annual inspection requirements.	Project sponsors shall conduct a risk evaluation, and shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals applicable to each land use proposed for development within the Hoedown Yard.	Prior to ground-disturbing activities at the Hoedown Yard.	Project sponsors shall submit the risk evaluation and proposed risk management plan to the RWQCB, DPH, and Port for review and approval.	Considered complete upon review and approval of the risk evaluation and proposed risk management plan by the RWQCB, DPH, and Port.	Port, DPH

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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The risk evaluation and proposed risk management plan shall be submitted to the RWQCB, DPH, and Port for review and approval prior to the start of ground disturbance.					
Mitigation Measure M-HZ-8a: Prevent Contact with Serpentinite Bedrock and Fill Materials in Irish Hill Playground The project sponsors shall ensure that a minimum 2-foot thick durable cover of asbestos-free clean imported fill with a vegetated cover is emplaced above serpentinite bedrock and fill materials in the level portions of Irish Hill Playground. The fill shall meet the soil criteria for clean fill specified in Table 4 of the Pier 70 RMP and included in Appendix F, Hazards and Hazardous Materials, of this EIR. Barriers shall be constructed to preclude direct climbing on the bedrock of the Irish Hill remnant. The design of the durable cover and barriers shall be submitted to the DPH and Port for review and approval prior to construction of the Irish Hill Playground.	Project sponsors to design and install a 2-foot-thick durable cover over serpentinite bedrock and fill in the level portions of the Irish Hill Playground and barriers to preclude direct climbing on the bedrock of the Irish Hill remnant.	Submittal of design of durable cover and barriers to DPH and Port prior to construction of the Irish Hill Playground.	Project sponsors shall submit design of durable covers and barriers to DPH, Port	Considered complete upon review and approval of the design and installation of the 2-foot-thick durable cover and barriers by the DPH and Port.	Port, DPH
Mitigation Measure M-HZ-8b: Restrictions on the Use of Irish Hill Playground To the extent feasible, the project sponsors shall ensure that the Irish Hill Playground is not operational until ground disturbing activities for construction of the new 21st Street and on the adjacent parcels (PKN, PKS, HDY-1, HDY2, C1, and C2) is completed. If this is not feasible, and Irish Hill Playground is operational prior to construction of the new 21st Street and construction on all adjacent parcels, the playground shall be closed for use when ground-disturbing activities are occurring for the construction of the new 21st Street and on any of the adjacent parcels.	Project sponsors.	Prior to and during construction of the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2.	Project sponsors shall ensure the playground is not operational until ground-disturbing activities at the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2 are complete; or playground shall be closed for use when ground-disturbing activities are occurring	Considered complete when the aforementioned parcels' ground-disturbin g activities are finished. Documentation would occur in the annual mitigation and monitoring report.	Port

VDDA EXHIBIT K

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
IMPROVEMENT MEASURES FOR THE PIER 70 MIXED-USED DISTRICT PROJECT					
Improvement Measure I-CR-4a: Documentation Before any demolition, rehabilitation, or relocation activities within the UIW Historic District, the project sponsors should retain a professional who meets the Secretary of the Interior's Professional Qualifications Standards for Architectural History to prepare written and photographic documentation of all contributing buildings proposed for demolition within the UIW Historic District. The documentation for the property should be prepared based on the National Park Service's Historic American Building Survey (HABS)/Historic American Engineering Record (HAER) Historical Report Guidelines. This type of documentation is based on a combination of both HABS/HAER standards and National Park Service's policy for photographic documentation, as outlined in the NRHP and National Historic Landmarks Survey Photo Policy Expansion. The written historical data for this documentation should follow HABS/HAER standards. The written data should be accompanied by a sketch plan of the property. Efforts should also be made to locate original construction drawings or plans of the property during the period of significance. If located, these drawings should be photographed, reproduced, and included in the dataset. If construction drawings or plans cannot be located, as-built drawings should be produced. Either HABS/HAER-standard large format or digital photography should be used. If digital photography is used, the ink and paper combinations for printing photographs must be in compliance with NR-NHL Photo Policy Expansion and have a permanency rating of approximately 115 years. Digital photographs should be taken as uncompressed, TIFF file format. The size of each image should be 1,600 by 1,200 pixels at 330 pixels per inch or larger, color format, and printed in black and white. The file name for each electronic image should correspond with the index of photographs and photograph label. Photograph views for the dataset should include (a)	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Project Sponsor Documentation : Before any demolition, rehabilitation, or relocation activities within the UIW Historic District.	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual to complete historic resources documentation, and transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Considered complete when documentation is reviewed and approved by Port Preservation Staff, and the documentation is provided to the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Port

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contextual views; (b) views of each side of each building and interior views, where possible; (c) oblique views of buildings; and (d) detail views of character-defining features, including features on the interiors of some buildings. All views should be referenced on a photographic key. This photographic key should be on a map of the property and should show the photograph number with an arrow to indicate the direction of the view. Historic photographs should also be collected, reproduced, and included in the dataset. The project sponsors should transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System. The project sponsors should scope the documentation measures with Port Preservation staff..					
Improvement Measure I-CR-4b: Public Interpretation Following any demolition, rehabilitation, or relocation activities within the project site, the project sponsors should provide within publicly accessible areas of the project site a permanent display(s) of interpretive materials concerning the history and architectural features of the District's three historical eras (Nineteenth Century, Early Twentieth Century, and World War II), including World War II-era Slipways 5 through 8 and associated craneways. The display(s) should also document the history of the Irish Hill Remnant, including, for example, the original 70- to 100-foot tall Irish Hill landform and neighborhood of lodging, houses, restaurants, and saloons that occupied the once much larger hill until the earlier twentieth century. The content of the interpretive display(s) should be coordinated and consistent with the sitewide interpretive plan prepared for the 28-Acre Site in coordination with the Port. The specific location, media, and other characteristics of such interpretive display(s) should be presented to Port preservation staff for approval prior to any demolition or removal activities.	Project sponsors should provide a permanent display(s) of interpretive materials concerning the history and architectural features of the District within publicly accessible areas of the project site.	<u>Project sponsors provide permanent display:</u> Following any demolition, rehabilitation, or relocation activities within the project site.	Project sponsors submit documentation of permanent display(s) of interpretive materials	Considered complete when interpretive materials are presented to Port preservation staff for approval. The materials would then be presented in the publically accessible area of the project site.	Port
Improvement Measure I-TR-A: Construction Management Plan <u>Traffic Control Plan for Construction</u> – To reduce potential conflicts between	Project sponsors, TMA, and	Prior to issuance of a	Construction contractor(s) to	Considered complete upon	Port, Planning Department,

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construction activities and pedestrians, bicyclists, transit, and autos during construction activities. the project sponsors should require construction contractor(s) to prepare a traffic control plan for major phases of construction (e.g., demolition and grading, construction, or renovation of individual buildings). The project sponsors and their construction contractor(s) will meet with relevant City agencies to coordinate feasible measures to reduce traffic congestion, including temporary transit stop relocations and other measures to reduce potential traffic and transit disruption and pedestrian circulation effects during major phases of construction. For any work within the public right-of-way, the contractor would be required to comply with San Francisco's Regulations for Working in San Francisco Streets (i.e., the "Blue Book"), which establish rules and permit requirements so that construction activities can be done safely and with the least possible interference with pedestrians. bicyclists, transit, and vehicular traffic. Additionally, non-construction-related truck movements and deliveries should be restricted as feasible during peak hours (generally 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., or other times, as determined by SFMTA and the Transportation Advisory Staff Committee [TASC]). In the event that the construction timeframes of the major phases and other development projects adjacent to the project site overlap, the project sponsors should coordinate with City Agencies through the TASC and the adjacent developers to minimize the severity of any disruption to adjacent land uses and transportation facilities from overlapping construction transportation impacts. The project sponsors, in conjunction with the adjacent developer(s), should propose a construction traffic control plan that includes measures to reduce potential construction traffic conflicts, such as coordinated material drop offs, collective worker parking, and transit to job site and other measures. <u>Reduce Single Occupant Vehicle Mode Share for Construction Workers</u> – To minimize parking demand and vehicle trips associated with construction workers, the project sponsors should require the construction contractor to include in the Traffic Control Plan for Construction methods to encourage	construction contractor(s).	building permit. Project construction updates for adjacent residents and businesses within 150 feet would occur throughout the construction phase.	prepare a Traffic Control Plan and meet with relevant City agencies (i.e., SFMTA, Port Staff, and Planning Department) to coordinate feasible measures to reduce traffic congestion. A single traffic control plan or multiple traffic control plans may be produced to address project phasing.	submittal of the Traffic Control Plan to the SFMTA and the Port. Project construction update materials would be provided in the annual mitigation and monitoring plan.	SFMTA as appropriate

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walking, bicycling, carpooling, and transit access to the project construction sites and to minimize parking in public rights-of-way by construction workers in the coordinated plan. Project Construction Updates for Adjacent Residents and Businesses – To minimize construction impacts on access for nearby residences, institutions, and businesses, the project sponsors should provide nearby residences and adjacent businesses with regularly-updated information regarding construction, including construction activities, peak construction vehicle activities (e.g.. concrete pours), travel lane closures, and lane closures via a newsletter and/or website.					
Improvement Measure I-TR-B: Queue Abatement It should be the responsibility of the owner/operator of any off-street parking facility with more than 20 parking spaces (excluding loading and car-share spaces) to ensure that vehicle queues do not occur regularly on the public right-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of any public street, alley, or sidewalk for a consecutive period of 3 minutes or longer on a daily or weekly basis. If a recurring queue occurs, the owner/operator of the parking facility should employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the parking facility, the street(s) to which the facility connects, and the associated land uses (if applicable). Suggested abatement methods include but are not limited to the following: redesign of facility to improve vehicle circulation and/or on-site queue capacity; employment of parking attendants; installation of LOT FULL signs with active management by parking attendants: use of valet parking or other space-efficient parking techniques; use of off-site parking facilities or shared parking with nearby uses; use of parking occupancy sensors and signage	Project sponsors, owner/operator of any off-street parking facility, and transportation consultant.	On-going during operations of any off-street parking facilities.	The owner/operator of the parking facility should monitor vehicle queues in the public right-of-way, and would employ abatement measures as needed. If the Port Director, or his or her designee, suspects that a recurring queue is present, the Port should notify the property owner in writing. The owner/operator should hire a transportation consultant to	Monitoring of the public right-of-way would be on-going by the owner/operator of off-street parking operations.	Port. Planning Department

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directing drivers to available spaces; TDM strategies such as additional bicycle parking, customer shuttles, delivery services; and/or parking demand management strategies such as parking time limits, paid parking, time-of-day parking surcharge, or validated parking. If the Port Director, or his or her designee, suspects that a recurring queue is present, Port Staff should notify the property owner in writing. Upon request, the owner/operator should hire a qualified transportation consultant to evaluate the conditions at the site for no less than 7 days. The consultant should prepare a monitoring report to be submitted to the Port for review. If the Port determines that a recurring queue does exist, the facility owner/operator should have 90 days from the date of the written determination to abate the queue.			prepare a monitoring report and if a recurring queue does exist, the owner/operator would abate the queue.		
Improvement Measure I-TR-C: Strategies to Enhance Transportation Conditions During Events. The project's Transportation Coordinator should participate as a member of the Mission Bay Ballpark Transportation Coordination Committee (MBBTCC) and provide at least 1-month notification to the MBBTCC where feasible prior to the start of any then known event that would overlap with an event at AT&T Park. The City and the project sponsors should meet to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Project sponsors, TMA, parks maintenance entity, parks programming entity, and/or Transportation Coordinator.	Prior to the start of any known event that would overlap with an event at AT&T Park.	Project sponsors and Transportation Coordinator to meet with MBBTCC and City to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Include in MMRP Annual Report; On-going during project lifespan.	Port, Planning Department, SFMTA
Improvement Measure I-WS-3a: Wind Reduction for Public Open Spaces and Pedestrian and Bicycle Areas For each development phase, a qualified wind consultant should prepare a wind impact and mitigation analysis regarding the proposed design of public open spaces and the surrounding proposed buildings. Feasible means should be considered to improve wind comfort conditions for each public open space, particularly for any public seating areas. These feasible means include horizontal and vertical, partially-porous wind screens (including canopies,	Project sponsors and qualified wind consultant.	During the design of public open spaces and pedestrian and bicycle areas for each development phase.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by the Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for public open spaces and pedestrian and	Port or Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
trellises, umbrellas, and walls), street furniture, landscaping, and trees. Specifics for particular public open spaces are set forth in Improvement Measures I-WS-3b to I-WS-3f. Any proposed wind-related improvement measure should be consistent with the design standards and guidelines outlined in the *Pier 70 SUD Design for Development*.				bicycle areas by the Port Staff.	
Improvement Measure I-WS-3b: Wind Reduction for Waterfront Promenade and Waterfront Terrace The Waterfront Promenade and Waterfront Terrace would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing vertical elements, such as wind screens and landscaping. Where necessary and appropriate, wind screens should be strategically placed directly around seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Waterfront Promenade and Waterfront Terrace.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Waterfront Promenade and Waterfront Terrace by Port Staff	Port
Improvement Measure I-WS-3c: Wind Reduction for Slipways Commons The central and western portions of Slipways Commons would be subject to winds exceeding the pedestrian wind comfort criteria. Street trees should be considered along Maryland Street, particularly on the east side of Maryland Street between Buildings E1 and E2. Vertical elements such as wind screens would help for areas where street trees are not feasible. Where necessary and appropriate, wind screens should be strategically placed to the west of any seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of	Project sponsors and qualified wind consultant.	During the design of the Slipway Commons.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Slipway Commons by Port Staff.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
any wind screen or landscaping shall be compatible with the Historic District.					
Improvement Measure I-WS-3d: Wind Reduction for Building 12 Market Plaza and Market Square Building 12 Market Plaza and Market Square would be subject to winds exceeding the pedestrian wind comfort criteria. For reducing wind speeds in the public courtyard between Buildings 2 and 12, the inner south and west façades of Building D-1 could be stepped by at least 12 feet to direct downwashing winds above pedestrian level. Alternatively, overhead protection should be used, such as a 12-foot-deep canopy along the inside south and west façades of Building D-1, or localized trellises or umbrellas over seating areas. For reducing wind speeds on the eastern and southern sides of Building 12, street trees should be considered, along Maryland and 22nd streets. Smaller underplantings should be combined with street trees to reduce winds at pedestrian level. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Building 12 Market Plaza and Market Square.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Building 12 Market Plaza and Market Square by Port Staff.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
Improvement Measure I-WS-3e: Wind Reduction for Irish Hill Playground The Irish Hill Playground would be subject to winds exceeding the pedestrian wind comfort criteria. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Irish Hill Playground.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Irish Hill Playground by Port Staff.	Port
Improvement Measure I-WS-3f: Wind Reduction for 20th Street Plaza The 20th Street Plaza would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing hardscape elements, such as wind screens, canopies, and umbrellas. Where necessary and appropriate, wind screens should be strategically placed to the northwest of any seating area. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. If there would be seating areas directly adjacent to the north façade of the PKN Building, localized canopies or umbrellas should be used. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the 20th Street Plaza.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the 20th Street Plaza by Port Staff.	Port

VDDA EXHIBIT L
ASSESSOR REQUESTED INFORMATION

Document Outline

Assessable/actionable events for Assessor ("ASR")

1. Initial land sale/ transfer of title
2. Mapping
3. Tax certificates
4. Lien date new construction
5. Completed new construction
6. Final ownership changes/sales to users

Assessable/Actionable Event information

1. Initial land sale / transfer of title [Include if event is applicable.]

a. Assessable: any recorded change in ownership or ground lease/changes to existing ground lease

b. Information needed:

i. Deeds (transfer maps do not convey title for ASR purposes)

ii. Subdivision maps and how they correspond to recorded deeds

iii. Appraisal for transfers from government entities or non-arm's length transactions

c. Timing: at the time of recording for a basis of calculating transfer tax **[or include applicable timeline from Assessor]**

2. Mapping [Include if event is applicable.]

a. Justification/Purpose: ASR needs this information to reserve new block and lot numbers for the project.

b. Information needed:

i. Tentative maps that overlay future parcel changes and project phases (with current APNs and future reserved APNs)

ii. Federal/state maps if applicable

iii. Timeline of subdivision activity and how the current parcels will be divided/combined/adjusted in each phase of the subdivision

iv. Initial subdivision maps and what deeds they correspond to

c. Timing:

i. Upon request to reserve APNs for new project **[or include applicable timeline from Assessor]**

3. **Tax certificates (Treasurer & Tax Collector's Office provides to ASR) [Include if event is applicable.]**

a. Justification: ASR needs this information to (1) ensure that any outstanding changes in ownership have been recorded and any completed or anticipated new construction has been valued and (2) to generate a new assessed value for TTX to use for tax pre-payment purposes.

b. Information needed:

i. Pre-final map

ii. TTX Form A and B (depending on how complicated the development is)

c. Timing: whenever requested by the taxpayer, ASR has four weeks to review and determine new value **[or include applicable timeline from Assessor]**

4. **Lien date new construction**

a. Justification/Purpose: ASR needs this information to accurately assess the value of new construction in progress as of January 1st as required by the Revenue & Taxation Code.

b. Information needed:

i. The date construction started and the estimated completion date. If construction was in progress on January 1st, the percentage of construction completed.

ii. A complete list of all the construction and/or demolition cost incurred as of this date, including direct and indirect costs and entrepreneurial profit. *(sample provided for reference* *<u>See Attachment 1</u>)*

iii. Copies of any leases signed.

iv. A detailed description of all work to be completed or any changes to the work description.

v. A copy of the pro forma, feasibility study or appraisal used to support the building of this project.

vi. Copies of all application for building permits.

vii. Certified copy of the lender's disbursement of funds.

viii. Cost not funded by construction loan.

ix. Details on any current or anticipated efforts to sell the property, if applicable.

x. Any additional information, if not referenced above, that would influence the market value of the property.

xi. Name, mailing address, phone number and e-mail of person(s) to contact regarding additional questions and inspection of property.

c. Timing:

i. By January 31st of each year the construction is in progress **[or include applicable timeline from Assessor.]**

5. Completed new construction

a. Justification: ASR needs this information to accurately assess the value of completed new construction as of the date of completion as required by the Revenue & Taxation Code.

b. Information needed:

i. All property types

A. The date construction started and completion date.

B. A detailed description of all work completed (attach referenced floor plans, etc.)

C. Copies of all applications for building permits.

D. A complete list of all construction costs *(see Attachment 1)* including direct, indirect costs and anticipated or actual entrepreneurial profit.

E. Detailed information on costs not funded by construction loans.

F. A copy of the pro forma, feasibility study or appraisal used to support the building of this project.

G. Details on any current or anticipated efforts to sell the property, if applicable.

H. Copies of any leases signed or currently in negotiation. Please include asking rents for spaces not leased.

I. A copy of the land lease or other document that indicates the value of the land, if applicable.

J. Projected or actual income and expense statement and a schedule of asking rent, if applicable. For actual statements, please provide the source document.

K. Certified copy of the lender's disbursement of funds.

L. Details on parking stall rents and any miscellaneous income.

M. Any appraisal completed.

N. Any additional information, if not referenced above, that would influence the market value of the property.

O. Name, address, phone number and email of person to contact for questions/arrange for a site inspection.

ii. Office

A. Rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

B. The gross and net rentable areas of the building.

C. Projected or actual sales volume of the property.

D. A copy of any existing operating agreements, if applicable.

E. A copy of the feasibility study.

F. A copy of the stacking plan, if applicable.

G. XFactor or BOMA recalculation of square footage, if applicable.

H. If the construction project includes a parking garage:

a. How will it be operated (i.e. leased to a second party for contract rent or net income to the owner)?

b. What is the anticipated number of spaces and vehicle capacity (with valet services if applicable)?

c. What will be the monthly fee for parking?

iii. Retail

A. Rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

B. The gross and net rentable areas of the building.

C. Details on parking stall rents and any miscellaneous income.

D. Projected or actual sales volume of the property.

E. A copy of the operating agreement signed with the mall owner, if applicable.

iv. Apartments

A. Tenant Rent Roll for residential and commercial units that includes the unit number, unit type (number of beds/baths), number of rooms, market rate or BMR unit, occupancy, square footage, contract rental rate, date lease signed, market rental rate, other fees collected – parking, storage, pet. Overall parking spaces, any upgrades, floor and view premiums (if applicable). Please provide a rent roll as of the certificate of occupancy and/or when stabilized occupancy is achieved.

B. A finish schedule.

C. Total square footage of improvements allocated by use (residential, retail, common area, parking, etc.). Area (sq. ft.) of each floor including basement, mezzanine, penthouse, etc.

v. Condos

A. The Parcel Split/Condo Conversion Questionnaire (See Attachment 2, Excel is strongly preferred.)

B. For any units retained by the developer (i.e. parking, storage, retail, etc.), please provide copies of any signed leases, details on any leases in negotiation or proposed, or a summary of asking rents. Include a tenant rent roll, projected or actual income and expense statements, and net rentable area of each retained unit.

C. Condo map/plan (if applicable) – required for us to split a new condo project or condo conversion

vi. Hotel

A. A list of the number of hotel rooms, the average daily rates, and projected occupancy levels.

B. Percentage of guest segmentation.

C. A copy of the Management Agreement.

D. A copy of the Franchise Fee Agreement, specifically identifying the franchise fees and how they are determined.

E. Breakdown of real property and personal property.

F. Current or projected rent roll showing any net rentable areas of the building by floor and area leased by each retail tenant (if any); the type of lease (FSG, NNN, or IG); the date and terms of each lease, the move in date; options to renew, escalation clauses, tax clauses, free rent or any lease concessions, or landlord/tenant improvement allowances. If there are no leasable office or retail areas on the property, so state.

c. Timing: within 60 days upon completion of construction for each project phase **[or include applicable timeline from Assessor.]**

6. Final ownership changes/sales to users

a. Event: any recorded change in ownership or new lease/changes to existing lease

b. Information needed:

i. All property types

A. Information about the sale:

a. The purchase agreement and closing statement

b. Identify the broker or agent on the sale

c. Original list price

d. Days on market

B. Details and terms of financing the property.

C. Details on any anticipated deferred maintenance costs or capital expenditures anticipated by buyer at the time of the sale (i.e. renovations, major repairs, seismic retrofitting, and asbestos abatement) and a detailed schedule of when the work is to be completed.

D. If the purchase price was not considered market value for the property, an explanation of why.

E. Detailed anticipated income and expense operating statements of the new owner at time of purchase and/or acquisition and the prior two (2) years.

F. Copies of any leases or lease abstracts, amendments or renewals, including free rent and tenant improvement allowances agreed to.

G. Marketing materials and/or asking rents to lease vacant space as of the transfer date

H. Any anticipated changes in use.

ii. Office

A. A copy of the Offering Memorandum distributed by selling agent.

B. Copies of any appraisal prepared for purchase financing.

C. The investor's pro-forma and market rent assumptions generated by Argus investment analysis or other format (Excel preferred).

D. A rent roll as of the change in ownership date showing; all tenants with corresponding suite numbers, suite sizes (sf), monthly or annual rent, date and terms of leases, scheduled rent escalations and any vacant rentable space (Excel format preferred).

E. Indicate if any lease expense agreements are other than full-service gross with a base year (FSG).

F. If vacancy is above 10%, provide historical vacancy or occupancy ratios (on an annual or bi-annual basis) over the previous three (3) years.

G. A detailed annual income and expense summary for the year of sale and the prior two (2) years. If historical income and operating statements were not provided by the seller, please substitute your operating budget as of the purchase date (Excel format preferred).

iii. Retail

A. Any cash flow analysis, pro forma worksheets or investment analysis in the acquisition of the property.

B. Any appraisal prepared for the acquisition or financing of the subject property.

C. Details on the financing involved for the purchase and/or acquisition of the subject property.

D. Current rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

E. The gross and net rentable areas of the building.

F. At the time of transfer, indicate the amount of net rentable vacant space, identify its location within the building and indicate the asking rental rates.

G. The anticipated sales volume of the property.

iv. Apartments

A. Rent roll as of the change in ownership date, showing the list of all tenants with monthly rent and move-in date. For retail tenants, please provide copies of the lease(s), including any amendments or renewals (Excel format preferred).

B. The anticipated rental rates for any vacant units.

C. The anticipated operating income and expenses at the time of purchase/change in ownership. If available, provide the operating income and expenses statements for the two (2) years preceding change in ownership (Excel format preferred).

D. Details on any miscellaneous income (parking, laundry, storage, etc.)

E. A copy of any appraisal prepared for any purpose (financing, insurance, investment) within two (2) years of the event date.

F. A description of each unit; number of rooms, bedrooms, bathrooms, furnished or unfurnished.

v. Hotel

A. Any appraisal, pro forma or feasibility study made to assist in the acquisition of the subject property, or for any other purpose (i.e. insurance, investment, financing) prepared within two (2) years of the event date.

B. List of the number of hotel rooms, the average daily rates and occupancy levels as of the change in ownership date and for the previous two (2) years.

C. The guest segmentation, by percentage.

D. Detailed, historic income and expense statement for the two (2) years prior to the event date, and the budgeted or anticipated income and expense statement for the first year following the change in ownership date.

E. Copy of the Management Agreement.

F. Copy of the Franchise Agreement, specifically identifying the franchise fees and how they are determined.

G. Copy of the Smith Travel Report for the property, as of the same year as the change in ownership.

H. The current rent roll showing net rentable areas by floor and area leased by each retail tenant (if any); the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances. If there are no leasable areas of the property, so state.

I. Copy of the sale agreement with detailed itemizations of all real property and business personal property components included in the sale.

vi. Single Family Homes/Condos

A. No additional information needed, recorded deed is sufficient

c. Timing: within 60 days of a change to the fee owner of the property **[or include applicable timeline from Assessor.]**

Attachments

1. **In Progress and Completed New Construction Cost Report template**

2. **Parcel Split/Condo Conversion Questionnaire**

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
DIRECT COST: (Includes)					
Building Permits/Fees					
Contractor's Profit and Overhead					
Equipment Used in Construction					
Labor Used in Construction					
Material, Products and Equipment					
Performance Bonds					
SUBTOTAL DIRECT COST					
TENANT IMPROVEMENT:					
Owners Cost					
Tenants Cost					
SUBTOTAL TENANT IMROVEMENT					
INDIRECT COST: (Includes)					
Architect Fees					
Construction Insurance					
Contingency					
Engineer Fees					
Financing Fees					
Interest Expense					
Lease-Up Costs					
Legal/Professional Fees					
Marketing/Sales Costs					
Other Misc.Fees					
Project Administration/Management					
Property Taxes					
SUBTOTAL INDIRECT COST					
LAND COST					
ENTREPRENEURIAL PROFIT					
TOTAL PROJECT COST					

______________________________ Print Name and Title

______________________________ Phone

______________________________ Signature

______________________________ Date

CONFIDENTIAL

UNIT NO.	USE	YEAR BUILT	TOTAL AREA	DECK AREA	STORIES	CONDO FLOOR	TOTAL ROOMS	BEDROOMS	BATHROOMS	HALF BATHROOMS	FIREPLACES	KITCH QLTY	PARKING SPACES	PARKING TYPE	VIEW TYPE	SALE DATE

VDDA EXHIBIT M

FORM OF ARCHITECT'S CERTIFICATE

TO: Port of San Francisco
Pier 1
San Francisco, California 94111

Completion of Vertical Project at Pier 70: ______________ [insert address/Project name]

DATE: __________

FROM: Architect of Record, ________________

The statements herein refer only to the Construction Documents prepared by the Architect. Any and all construction documents prepared by others, such as engineers, consultants or contractors, are not included in these representations. This Architect's Certificate is being provided pursuant to Section 13.1(a) of that certain Vertical Disposition and Development Agreement dated _____________, 20XX (the "**Vertical DDA**") between the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission and ________________, a _______________. Capitalized terms used herein have the meanings given them in the Vertical DDA.

We hereby declare that we are architects licensed in the State of California and that we prepared the final Construction Documents for the Vertical Project ([**Add the following only if applicable**: other than Deferred Infrastructure).] As Architect of Record for the construction of the Improvements, to the best of our knowledge, we hereby declare as follows:

1. The Vertical Project has been completed in accordance with the final Construction Documents except as noted on ***Schedule A*** attached hereto (collectively, the "**Plans**"). The Plans describe the Vertical Project, completely and accurately, depict all material parts of the Vertical Project and have been completed with the standard of care exercised in this profession.

2. Based on our observations, the construction of the Vertical Project has been performed in a good and worker-like manner, except as may be noted on Schedule A attached hereto.

3. In our professional opinion, the completed Vertical Project complies with all applicable local, state, federal laws, regulations and ordinances.

4. We have been notified by our client, the Vertical Developer, that the required Regulatory Approvals, including necessary building permits, from all Regulatory Agencies related to the Vertical Project have been issued and are in force, and there is not an undischarged violation of applicable Laws of which we have notice as of the date hereof, except as may be noted on ***Schedule A*** attached hereto.

________________[insert Architect Firm]

By: ________________________________
Name: ____________
Title: __________________________

SCHEDULE A

EXCEPTIONS TO ARCHITECT'S CERTIFICATE

DATED ______________________________

The statements made on the Architect's Certificate to which this Schedule A is attached are subject to the following exceptions:

VERTICAL DDA
EXHIBIT N
FORM OF CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF AND WHEN RECORDED MAIL TO:

This document is exempt from payment of a recording fee pursuant to California Government Code Sec. 27383

San Francisco Port Commission
Port of San Francisco
Pier 1
San Francisco, CA 94111
Attention: Port General Counsel

APN: SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLETION OF VERTICAL PROJECT

WHEREAS, the **CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**") and ___________, a ________________ (the "**Vertical Developer**") entered into a Vertical Disposition and Development Agreement dated as of ___________, 20XX (the "**Vertical DDA**"), a memorandum of which was recorded on _______________, 20XX, in the Office of the Recorder of the City and County of San Francisco, in Reel ______, of the Official Records, at Image __________, setting forth the rights and obligations of the Vertical Developer with respect to the construction of the Vertical Project on that certain real property situated in the City and County of San Francisco, State of California, which property is particularly described in ***Exhibit A*** attached hereto and made a part hereof (the "**Property**"), and setting forth the terms and conditions under which Port and Vertical Developer would enter into a lease for the Property. Except as otherwise defined herein, capitalized terms shall have the meanings given them in the Vertical DDA;

[add if Property is subject to a Parcel Lease] WHEREAS, by Lease No. __________ dated as of _____________, 201___ (the "**Lease**"), a memorandum of which was recorded on _________________, 201____, in the Office of the Recorder of the City and County of San Francisco, in Reel ________, of the Official Records, at Image ___, Port did convey to the Vertical Developer (as Tenant thereunder) a leasehold interest in the Property;

[add if Property if a fee parcel] WHEREAS, pursuant to the Vertical DDA, Port conveyed fee title to the Property to Vertical Developer on _____________, 20__;

WHEREAS, Port has conclusively determined that Vertical Developer has Completed the Vertical Project and fully performed all obligations under the Vertical DDA in accordance with its terms; and

WHEREAS, as stated in the Vertical DDA, Port's determination regarding the Completion of the Vertical Project is not directed to, and thus Port assumes no responsibility by virtue of this Certificate of Completion for, any of the Project Requirements or compliance with applicable Laws, including applicable building, fire, or other code requirements, conditions to occupancy of any improvement, or other applicable Laws.

NOW THEREFORE, as provided in the Vertical DDA, and subject to the foregoing provisions hereof, Port does hereby certify that the Vertical Project has been fully performed and completed as aforesaid as of _______________, 20___ (the "**Effective Date**") and that the Vertical DDA is terminated (other than the provisions that survive the expiration or termination of the Vertical DDA) as of the Effective Date.

Nothing contained in this instrument shall modify in any way any provisions of the Lease.

IN WITNESS WHEREOF, Port has duly executed this instrument this ____ day of _________________, 20___.

THE CITY AND COUNTY OF SAN FRANCISCO,
operating by and through the
SAN FRANCISCO PORT COMMISSION

By: ______________________________
Name: ____________________________
Title: ____________________________

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: ______________________________
Name: ____________________________
Deputy City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF ____________

On ________________ before me, ______________________________ personally
(insert name and title of the officer),
appeared ____
____
____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

__________________________________ (Seal)
Signature

VERTICAL DDA EXHIBIT O

FORM OF SIGNIFICANT CHANGE CERTIFICATE

To:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Executive Director
Re: Pier 70 Vertical DDA, Parcel [XX]

Re: Significant Change Certificate for Parcel [XX]

This Significant Change Certificate (the "**Certificate**") is delivered to the Port, pursuant to Section 19.4(a) of that certain Vertical Disposition and Development Agreement, between the **CITY AND COUNTY OF SAN FRANCISCO** operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**") and ____________________________ ("**Vertical Developer**"), and dated ______________________, ____ (as amended, the "**Vertical DDA**").

Vertical Developer has requested Port's consent to a Significant Change (as that term is defined in the Vertical DDA), which consent is governed by Section 19.4 of the Vertical DDA. In satisfaction of Section 19.4(a)(2) of the Vertical DDA, the chief financial officer of Vertical Developer hereby certifies to Port the following information regarding the proposed Significant Change

Purchaser(s):____

Purchase price:______________________________

[[**if applicable**] Qualifying Early Sale Proceeds that will be treated as Land Proceeds in accordance with Section 3.6 of Parcel Lease Exhibit D]

Furthermore, Vertical Developer hereby reaffirms that it will continue to be obligated under all the terms and conditions of the Vertical DDA. As the chief financial officer of Vertical Developer, the undersigned certifies that this Certificate is true, accurate and complete.

This Certificate is for the benefit and protection of Port, with the understanding that the Port shall have the right to rely upon this Certificate.

[NAME OF VERTICAL DEVELOPER]

By:______________________________
Name:____________________________
Title:_____________________________

VERTICAL DDA EXHIBIT P [FOR FEE PARCELS ONLY]

FORM OF VERTICAL DEVELOPER ESTOPPEL CERTIFICATE

The undersigned, [______________], a [______________] ("**Vertical Developer**"), is the Vertical Developer under that certain Vertical Disposition and Development Agreement dated as of ______________, 20XX (the "**Vertical DDA**"), by and between the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission ("**Port**") and Vertical Developer, in connection with the development of the real property commonly known as ______________, as more particularly described in the Vertical DDA (the "**Property**"). This Estoppel Certificate is provided to Port in connection with a proposed Transfer of the Vertical DDA as contemplated under Section 19.4 thereof.

Vertical Developer hereby certifies to Port the following as of the date set forth below:

1. The Effective Date of the Vertical DDA is ______________, 20XX.

2. The Vertical DDA is presently in full force and effect (as may be modified, assigned, supplemented and/or amended as set forth in ***paragraph 3*** below.

3. The Vertical DDA has not been modified, assigned, supplemented or amended except as follows:

____

____

4. The Vertical DDA [insert other agreements between Vertical Developer and Port such as the Parcel Lease, if any: (collectively, the "Property Agreements")] represents the entire agreement between Port and Vertical Developer with respect to the Property.

5. To Vertical Developer's actual knowledge, Port is not in default or breach of the Vertical DDA/Property Agreements, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Vertical DDA/Property Agreements by Port.

6. To the best of Vertical Developer's knowledge, Vertical Developer is not in default or in breach of the Vertical DDA/Property Agreements, nor has Vertical Developer committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Vertical DDA/Property Agreements by Vertical Developer.

7. Vertical Developer is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

8. Vertical Developer has [not yet] commenced construction of the Vertical Project[and approximately [____%] of the Vertical Project has been completed].

This Certificate shall be binding upon Vertical Developer and inure to the benefit of Port, [__________] and [its/their respective] successors and assigns.

Dated: ____________, 20___.

[ ], a [________]

By: ________________________
Name: ______________________
Title: ______________________

By: ________________________
Name: ______________________
Title: ______________________

VDDA EXHIBIT Q
City and Port Special Provisions

The Municipal Code (available at www.sfgov.org) and City and Port policies described in this Exhibit are incorporated by reference as though fully set forth in the VDDA (collectively, the "**City and Port Special Provisions**"). Vertical Developer is charged with full knowledge of and compliance with each applicable requirement, whether or not summarized below. All statutory references in this Exhibit are to the Municipal Code as in effect on the Reference Date of the Horizontal DDA unless specified otherwise. Initially capitalized or highlighted terms used in this Exhibit and not defined in the Horizontal DDA have the meanings ascribed to them in the cited ordinance.

The application to the 28-Acre Site Project of the specified provisions of the City and Port Special Provisions is subject to **DA § 5.3** (Changes to Existing City Laws and Standards) and waivers under Sections 6, 7, 8 and 9 of Ordinance No. 224-17, which is attached to and incorporated into the City and Port Special Provisions (collectively, the "**DA Waivers**").

The descriptions below are not comprehensive but are provided for notice purposes only. Vertical Developer understands that its failure to comply with any applicable provision of the City and Port Special Provisions will give rise to the specific remedies under the applicable City and Port Special Provisions and in certain cases give rise to a default under the VDDA, which could result in a default under the DA as well. References to "Developer" in the City and Port Special Provisions will apply to VDDA Parties and their successors under the VDDA and DA Successors under the DA.

<u>Municipal Codes and Policies Summarized</u>

1. Nondiscrimination in Contracts and Property Contracts
2. Health Care Accountability Ordinance
3. Prevailing Wages and Working Conditions in Construction Contracts
4. Other Prevailing Wage Rate Requirements
5. First Source Hiring Program
6. Criminal History In Hiring And Employment Decisions
7. Employee Signature Authorization Ordinance
8. Tobacco Products and Alcoholic Beverages
9. Integrated Pest Management Program
10. Resource-Efficient Facilities and Green Building Requirements
11. Tropical Hardwood and Virgin Redwood Ban
12. Diesel Fuel Measures
13. Arsenic-Treated Wood
14. Food Service and Packaging Waste Reduction Ordinance
15. Bottled Drinking Water
16. Graffiti Removal and Abatement
17. Drug-Free Workplace
18. Nutritional Standards and Guidelines
19. All-Gender Toilet Facilities
20. Indoor Air Quality
21. Conflicts of Interest
22. Sunshine
23. Contribution Limits-Contractors Doing Business with the City
24. Implementing the MacBride Principles – Northern Ireland

Contracting, Hiring, and Construction

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

(a) Covered Contracts. All provisions in this Section regarding the Nondiscrimination in Contracts and Property Contracts ordinance apply to "subcontracts to contracts" and "property contracts" as defined in Administrative Code sections 12B.2 and 12C.2.

(b) Covenant Not to Discriminate. In its development of the FC Project Area, Developer covenants and agrees not to discriminate against or segregate any person or group of persons on any basis listed in section 12955 of the California Fair Employment and Housing Act (Cal. Gov. Code §§ 12900-12996), or on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, AIDS/HIV status, weight, height, association with members of protected classes, or in retaliation for opposition to any forbidden practices against any employee of, any City employee working with, or applicant for employment with Developer, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social, or other establishment or organization operated by Developer.

(c) Requirement to Include. Developer must: (i) include a nondiscrimination clause in substantially the form of **Subsection (a** (Covenant Not to Discriminate); and (ii) incorporate by reference Administrative Code sections 12B.2(a), 12B.2(c)-(k), and 12C.3(a) in all applicable contracts, subcontracts, and subleases and require all contractors, subcontractors, and subtenants to comply with those provisions.

(d) Nondiscrimination in Benefits. Developer agrees not to discriminate between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of employees, where the domestic partnership has been registered with any governmental entity under state or local law authorizing registration, subject to the conditions set forth in Administrative Code section 12B.2. Developer's agreement relates to bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits (collectively "**Core Benefits**"), as well as other employee benefits described in section 12B.1(b), during the term of each applicable contract, subcontract, and sublease.

(e) Form. On or before the Reference Date, Developer must complete, execute, deliver to, and obtain approval of its completed *Nondiscrimination in Contracts and Benefits* form CMD-12B-101 from CMD. The form is available on CMD's website.

(f) Penalties. Developer understands that under Administrative Code section 12B.2(h), the City may assess against Developer or deduct from any payments due Developer a penalty of $50 for each person for each calendar day during which Developer or its subcontractor, property contractor, or other contractor discriminated against a protected person in violation of this Section. Violation of this Section, if not cured after notice and opportunity to

cure, also will be an Event of Default under the DDA and the DA and a material breach of any applicable contract, subcontract, or sublease..

2. Health Care Accountability Ordinance.
(Admin. Code ch. 12Q)

(a) Developer agrees to comply fully with and be bound by the Health Care Accountability Ordinance ("**HCAO**"), as set forth in Administrative Code chapter 12Q, unless exempt.

(b) Covered Employees. For each Covered Employee, Developer must provide the appropriate health benefit set forth in HCAO section 12Q.3, unless it is exempt as a small business under HCAO section 12Q.3(e).

(c) Notice and Opportunity to Cure. If Developer fails to cure a violation of the HCAO after receiving notice of a violation and an opportunity to cure the violation, the City will have the remedies set forth in HCAO section 12Q.5(f), subject to the DA Waivers, which the City may exercise individually or in combination with any of its other rights and remedies.

(d) Covered Contracts. Any Contract, Subcontract, or Sublease, as defined in Chapter 12Q, that Developer enters into for public works, public improvements, or for services must require the Contractor, Subtenant, or Subcontractor, as applicable, to comply with the applicable provisions of the HCAO and must contain contractual obligations substantially the same as those set forth in the HCAO. Developer agrees to notify the Contracting Department promptly of any Subcontractors performing services covered by Chapter 12Q and certify to the Contracting Department that Developer has notified the Subcontractors of their HCAO obligations under this Chapter.

(e) Noncompliance. Developer will be responsible for monitoring compliance with the HCAO by each Subcontractor, Subtenant, and Contractor performing services on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its Subcontractors, Subtenants, or Contractors. The City's remedies for Developer's noncompliance with the HCAO are subject to the DA Waivers.

(f) Retaliation Prohibited. Developer must not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City of any issue regarding noncompliance or anticipated noncompliance with the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Representation and Warranty. Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Reporting. Upon request, Developer must provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO.

(i) Records. After receiving a written request from the City to inspect pertinent payroll records and after at least 10 days to respond have elapsed, Developer agrees to provide the City with access to pertinent payroll records relating to the number of employees employed and terms of medical coverage. In addition, the City and its Agents, in consultation with the Department of Public Health, may conduct audits of Contracting Parties, although such audits

shall be conducted through an examination of records at a mutually agreed upon time and location within 10 days after written notice. Developer agrees to cooperate with the City in connection with these audits.

(j) Threshold. If a Subcontractor, Subtenant, or Contractor is exempt from the HCAO because the amount payable to the Subcontractor, Subtenant, or Contractor under all of its contracts with the City or relating to City-owned property is less than $25,000 (or $50,000 for nonprofits) in that City Fiscal Year, but the Subcontractor, Subtenant, or Contractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to the Subcontractor, Subtenant, or Contractor to equal or exceed $75,000 in that City Fiscal Year, then all of the Contractor's, Subtenant's, or Subcontractor's contracts with the City and relating to City-owned property will become subject to the HCAO from the date on which the later agreement is executed.

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

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

(b) Requirement. Developer must comply with the prevailing wage requirements in *WDP § III.C.6 (Prevailing Wages)* that apply to construction work on all Prevailing Wage Covered Projects by Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) (as defined in the WDP).

(c) Penalties. The Port has designated OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in accordance with the WDP, subject to the DA Waivers.

4. Other Prevailing Wage Rate Requirements.
(Admin. Code ch. 21C)

(a) Under Administrative Code ch. 21C, individuals employed in certain activities at the FC Project Area are entitled to be paid not less than either the highest general prevailing rate of wages (including fringe benefits or their matching equivalents) paid in private employment for similar work in the area in which the contract is being performed, as determined by the Civil Service Commission or the "**Prevailing Rate of Wages**" (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the activities meet any of the specified exemptions. Covered activities are:

(i) motor bus services provided to the general public (§ 21C.1);

(ii) "**Janitorial Services**" (§ 21C.2);

(iii) operation of a "**Public Off-Street Parking Lot, Garage, or Automobile Storage Facility**" (§ 21C.3);

(iv) theatrical or technical services related to the presentation of a show, including workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services (§ 21C.4);

(v) operation of a "**Special Event**" (§ 21C.8);

(vi) "**Broadcast Services**" (§ 21C.9); and

(vii) driving a "**Commercial Vehicle**" or loading or unloading materials, goods, or products into or from a Commercial Vehicle in connection with the presentation of a "**Show**" or for a Special Event (§ 21C.10).

(b) Agreement. Developer agrees to comply with the obligations in Administrative Code chapter 21C and to require its tenants, contractors, and any subcontractors to comply with the obligations in chapter 21C. In addition, if Developer or its tenant, contractor, or any subcontractor fails to comply with these obligations, the City will have all available remedies against Developer to secure compliance and seek redress for workers who provided the services.

(c) OLSE. For current Prevailing Wage rates, see the OLSE website or call the OLSE at 415-554-6235.

5. First Source Hiring Program.
(Admin. Code ch. 83)

Developer's obligations to comply with the First Source Hiring Program are set forth in *WDP §§ II.C.3 (First Source Hiring Program for Construction Work)* and *II.D2 (First Source Hiring Program for Operations).*

6. Criminal History In Hiring And Employment Decisions.
(Admin. Code ch. 12T)

(a) Agreement to Comply. Administrative Code Chapter 12T ("**Chapter 12T**") will only apply to a Contractor's, Subcontractor's, or subtenant's operations to the extent those operations are in furtherance of performing a Contract or Property Contract with the City subject to Chapter 12T. If applicable, Developer will comply with and be bound by Chapter 12T, including the remedies and implementing regulations, with respect to applicants to and employees of Developer who would be or are performing work at the FC Project Area under the DDA.

(b) Breach. Developer must incorporate Chapter 12T by reference in all contracts related to be performed in furtherance of a Contract or Property Contract with the City, as defined in Administrative Code section 12T.1. Developer will be responsible for monitoring compliance by its Subcontractors, Contractors, and subtenants, but the City agrees that Developer will not be liable for their noncompliance.

(c) Prohibited Activities. Developer and its Subcontractors, Contractors, and subtenants must not inquire about, require disclosure of, or if the information is received, base an Adverse Action on an applicant's or potential applicant's or employee's: (i) Arrest not leading to a Conviction, except under circumstances identified in Chapter 12T as an Unresolved Arrest; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise

rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system; (v) a Conviction that is more than seven years old, based on the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction, except that a Contractor, Subcontractor, or subtenant may inquire about, require disclosure of, base an Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or employee's driving record if driving is more than a de minimis element of the employment in question.

(d) Employment Applications. Developer and its Subcontractors, Contractors, and subtenants must not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any Conviction History or unresolved arrest until either after the first live interview with the person, or after a conditional offer of employment in accordance with section 12T.4(c).

(e) Disclosure. Developer and its Subcontractors, Contractors, and subtenants must state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Developer or its Subcontractors, Contractors, and subtenants at the FC Project Area that the DDA and all Contracts and Property Contracts will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Posting. Developer and its Subcontractors, Contractors, and subtenants must post the notice prepared by the OLSE, available on OLSE's website, in a conspicuous place at the FC Project Area and at other workplaces, job sites, or other locations under the Subcontractor's, Contractor's, or subtenant's control at which work is being done or will be done in furtherance of performing a Contract or Property Contract under the DDA with the City. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the FC Project Area or other workplace at which it is posted.

(g) Penalties. Developer and its Subcontractors, Contractors, and subtenants understand and agree that upon any failure to comply with Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T, subject to **Subsection (b)** (Breach) and the DA Waivers, including a penalty of $50 for each employee, applicant or other person as to whom the violation occurred or continued, and thereafter, for subsequent violations, the penalty may increase to no more than $100, for each employee or applicant whose rights were, or continue to be, violated.

(h) Inquiries. If Developer has any questions about the applicability of Chapter 12T, it may contact the Port for additional information. The Port will consult with the Director of the City's Office of Contract Administration, who has authority to grant a waiver under the circumstances set forth in section 12T.8 of Chapter 12T.

7. Employee Signature Authorization Ordinance.
(S.F. Admin Code §§ 23.50-23.56)

The City has adopted an Employee Signature Authorization Ordinance, which requires employers of employees in hotel or restaurant projects on public property with 50 or more full-time or part-time employees to enter into a "card check" agreement with a labor union regarding

the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Developer agrees to comply with the requirements of the ordinance, if applicable, including any requirements applicable to its successors, as specified in Administrative Code section 23.54.

Use Of City Property

8. Tobacco Products and Alcoholic Beverages.
(Admin. Code § 4.20; Health Code art. 19K)

(a) Definitions. For purposes of this Section: (i) "**alcoholic beverage**" is defined in California Business and Professions Code section 23004 and excludes cleaning solutions, medical supplies, and other products and substances not intended for drinking; and (ii) "**tobacco product**" is defined in Health Code section 1010(b).

(b) Advertising Ban. New general advertising signs that are visible to the public are prohibited on the exterior of any City-owned building under Administrative Code section 4.20-1.

(c) Tobacco Sales Ban. No person may sell tobacco products on property owned by or under the control of the City under Health Code article 19K.

(d) Alcoholic Beverage Advertising. Port property used for operation of a restaurant, concert or sports venue, or other facility or event where the sale, production, or consumption of alcoholic beverages is permitted, will be exempt from the alcoholic beverage advertising prohibition in Administrative Code section 4.20(a)-(c).

9. Integrated Pest Management Program.
(Env. Code ch. 3)

(a) IPM Plan. Chapter 3 of the Environment Code (the "**IPM Ordinance**") describes an integrated pest management policy ("**IPM Policy**") to be implemented by all City departments. Except for the permitted uses of pesticides provided in IPM Ordinance section 303, Developer must not use or apply during the DDA term, and must not contract with any party to provide pest abatement or control services to the FC Project Area, except in compliance with the Port's integrated pest management plan ("**IPM Plan**").

(b) Application. Although not a City Department, Developer agrees to comply, and must require all of Developer's contractors to comply, with the Port's approved IPM Plan and IPM Ordinance sections 300(d), 302, 304, 305(f), 305(g), and 306, as if Developer were a City department. Among other matters, the IPM Ordinance: (i) provides for the use of pesticides only as a last resort; (ii) prohibits the use or application of pesticides on City-owned property except for pesticides granted exemptions under IPM Ordinance section 303 (including pesticides included on the most current Reduced Risk Pesticide List compiled by the Department of the Environment); (iii) imposes certain notice requirements; and (iv) requires Developer to keep certain records and to report to the City all pesticide use by Developer's staff or contractors.

(c) Prior Review. Before Developer or Developer's contractor applies pesticides to outdoor areas, Developer must obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application must be made only by or under the supervision of

a person holding a valid Qualified Applicator certificate or Qualified Applicator license under California law. The City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the Department of the Environment website, http://sfenvironment.org/ipm.

10. Resource-Efficient Facilities and Green Building Requirements.
(Env. Code ch. 7)

Developer agrees to comply with all applicable provisions of the Environment Code relating to resource-efficiency and green building design requirements.

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

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

12. Diesel Fuel Measures.
(Env. Code ch. 9)

Consistent with the City's Greenhouse Gas Emissions Reduction Plan (Env. Code § 903) to reduce greenhouse gas emissions in the City, Developer must minimize exhaust emissions from operating equipment and trucks during construction. Developer's compliance with MMRP Mitigation Measure M-AQ-1a will satisfy this requirement.

13. Arsenic-Treated Wood.
(Env. Code ch. 13)

Developer must not purchase preservative-treated wood products containing arsenic on behalf of the City in the performance of the DDA without obtaining an exemption under Environment Code section 1304 from the Department of Environment. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. In this Section: (a) **"preservative-treated wood containing arsenic"** means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative; and (b) **"saltwater immersion"** means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

14. Food Service and Packaging Waste Reduction Ordinance.
(Env. Code ch. 16)

Developer agrees to comply fully with and be bound by section 1604(d) of the Food Service and Packaging Waste Reduction Ordinance (Env. Code ch. 16), including the remedies provided in section 1607 and implementing guidelines and rules. By entering into the DDA and the Development Agreement, Developer agrees that if it breaches this provision, and fails to cure within the cure periods provided herein, the City will suffer actual damages that will be impractical or extremely difficult to determine and that the following amounts of liquidated damage are reasonable estimates of the damage that the City will incur based on any violation, established in light of the circumstances existing on the Reference Date: (a) $100 for the first breach; (b) $200 for the second breach in the same year; and (c) $500 for subsequent breaches in the same year. These liquidated damages will not be considered penalties, but agreed monetary damages sustained by the City because of Developer's noncompliance.

15. Bottled Drinking Water.
(Env. Code ch. 24; Port Reso. No. 12-11)

Developer is subject to all applicable provisions of Environment Code chapter 24 prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of 21 fluid ounces or less at Events held on City Property with attendance of more than 100 people during the DDA Term. Also, Developer must comply with the Port's *Zero Waste Policy for Events and Activities* (Port Reso. No. 12-11) for applicable Events at the FC Project Area during the DDA Term.

16. Graffiti Removal and Abatement.
(Pub. Works Code Sec. 23)

(a) Requirement. Developer agrees to remove all graffiti from the FC Project Area, including from the exterior of any structures within the FC Project Area, consistent with the notice and cure provisions of Public Works Code section 23. If the Director of Public Works determines that any property contains graffiti in violation of section 2303, the Director may issue a notice of violation to Developer and any Offending Party. At the time the notice of violation is issued, the Director will take one or more photographs of the alleged graffiti and make copies of the photographs available to Developer and any Offending Party upon request. The photographs will be dated and retained as a part of the file for the violation. The notice will give Developer and any Offending Party 30 days after the date of the notice to either remove the graffiti or request a hearing on the notice of violation and set forth the procedure for requesting the hearing. This Section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property.

(b) Application. In this Section, "**graffiti**" means any inscription, word, figure, marking, or design that is affixed, marked, etched, scratched, drawn, or painted on any building, structure, fixture, or other improvement, whether permanent or temporary, including signs, banners, billboards, and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (i) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the DDA or the Port

Building Code; (ii) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*); (iii) any painting or marking that a City department makes in the course of its official duties or as part of a public education campaign; or (iv) any painting or marking required for compliance with any local, state, or federal law.

17. Drug-Free Workplace.
(41 U.S.C. ch. 81; Police Code art. 40)

To the extent applied by a federal grant or contract for the Project, the Drug-Free Workplace Act of 1988 (41 U.S.C. ch. 81) will apply to Developer. Developer agrees to adopt a Drug-Free Workplace Policy and comply with all other applicable requirements of the drug-free workplace laws under Police Code article 40.

18. Nutritional Standards and Guidelines.
(Admin. Code § 4.9-1)

(a) Definitions. For the purpose of this Section: (i) "**meal**" means "**prepared food**" as defined in Environment Code section 1602(l), which means food or beverages prepared within San Francisco for individual customers or consumers in a form commonly understood to be a breakfast, lunch, or dinner; (ii) "**Nutritional Standards Requirements**" means the food and beverage nutritional standards and calorie labeling requirements set forth in Administrative Code section 4.9-1(c); (iii) "**restaurant**" is defined in Health Code section 451(s) and includes any coffee shop, cocktail lounge, sandwich stand, public school cafeteria, in-plant or employee eating establishment, and any other eating establishment that gives or offers for sale food that requires no further preparation to the public, guests, patrons, or employees for consumption on or off the premises; (iv) "**vending machine**" is defined in Administrative Code section 4.2(a) and means an automated machine dispensing products or services, including food, beverages, tobacco products, newspapers, and periodicals.

(b) Vending Machines. Any permitted vending machine must comply with the Nutritional Standards Requirements in section 4.9-1(c). Developer must incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the FC Project Area or for the supply of food and beverages to that vending machine.

(c) Restaurants. Any restaurant on City property is encouraged to ensure that at least 25% of meals offered on the menu meet the Nutritional Standards Requirements set forth in Administrative Code section 4.9-1(e).

(d) Penalties. Developer's failure to comply with the Nutritional Standards Requirements in section 4.9-1(c) will be considered an Event of Default under the DDA and in addition to its other remedies, which will be subject to the DA Waivers, the City may require the removal of any vending machine on the FC Project Area that is not permitted or that violates the Nutritional Standards Requirements. Developer will be responsible for monitoring compliance with the Nutritional Standards Requirements by each subcontractor, subtenant, and contractor performing services or occupying premises on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its subcontractors, subtenants, or contractors.

19. All-Gender Toilet Facilities.
(Admin. Code § 4.1-3)

Developer must include at least one all-gender toilet facility on each floor of any new building on City-owned land or that is constructed by or for the City where toilet facilities are required or provided. Unless not allowed by an existing lease, whenever extensive renovations are made on one or more floors in any building on land that the City owns or in a building that is leased to or by the City, Developer will provide at least one all-gender toilet facility on each floor where the renovations take place and toilet facilities are required or provided. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures. "Extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the required toilet facilities.

20. Indoor Air Quality.
(Env. Code § 711(g))

Developer agrees to comply with section 711(g) of the Environment Code and regulations adopted under Environment Code section 703(b) relating to construction and maintenance protocols to address indoor air quality.

<u>Use Of Port Property</u>

21. Southern Waterfront Community Benefits and Beautification Policy.
(Port Reso. No. 07-77)

(a) <u>Policy Goals</u>. 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) <u>Agreement to Use Local Truckers</u>. Except to the extent inconsistent with any pertinent collective bargaining agreement, Developer agrees that, for all directly contracted or

service agreement trucking opportunities associated with Developer's operations at the FC Project Area, including hauling materials on, off, and within the Project Site, Developer will make good faith efforts to use Local Truckers first. For purposes of this Section, "**truckers**" means a business that provides trucking services for a profit, and "**Local Truckers**" means truckers that CMD has certified as LBEs.

To the extent that Developer in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Developer must use Local Truckers for a minimum of 60% of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the 60% requirement; equipment rental and disposal fees will not be counted. Developer will not be in default of this provision for not meeting the 60% minimum if Developer offered trucking opportunities to Local Truckers, but the Local Truckers were unavailable or unwilling to perform the work.

During all periods of construction activities at the Project Site, Developer must submit a monthly report to the Port and CMD stating the total cost to Developer of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers. The monthly report must document all truckers who conducted contract or service agreement work for Developer, and identify truckers that are Local Truckers. If Developer fails to meet the 60% minimum in any month, the report must document Developer's good faith outreach efforts to contact Local Truckers and the reasons that the work could not be conducted by Local Truckers. At the Port's or CMD's request, Developer must provide additional documentation required to ensure Developer's compliance with this provision. Developer's failure to comply with this Section will be a Material Breach under the DDA.

Other Public Policies

22. Conflicts of Interest.
(Calif. Gov. Code §§ 87100 *et seq.* & §§ 1090 *et seq.*; Charter § 15.103; Campaign and Govt'l Conduct Code art. III, ch. 2)

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

23. Sunshine.
(Calif. Gov. Code §§ 6250 *et seq.*; Admin. Code ch. 67)

Developer understands and agrees that under the California Public Records Act (Calif. Gov. Code §§ 6250 *et seq.*) and the City's Sunshine Ordinance (Admin. Code ch. 67), the Transaction Documents and all records, information, and materials that Developer submits to the City may be public records subject to public disclosure upon request. Developer may mark materials it submits to the City that Developer in good faith believes are or contain trade secrets or confidential proprietary information protected from disclosure under public disclosure laws, and the City will attempt to maintain the confidentiality of these materials to the extent provided

by law. Developer acknowledges that this provision does not require the City to incur legal costs in any action by a person seeking disclosure of materials that the City received from Developer.

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

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

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

(i) Developer is familiar with Section 1.126.

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

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

25. Implementing the MacBride Principles – Northern Ireland.
(Admin. Code ch. 12F)

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

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*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
13 **Board amendment additions** are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.
15
16 Be it ordained by the People of the City and County of San Francisco:
17 Section 1. Background and Findings.
18 (a) California Government Code Sections 65864 et seq. ("Development Agreement
19 Law") authorize any city, county, or city and county to enter into an agreement for the
20 development of real property within its jurisdiction.
21 (b) Chapter 56 of the Administrative Code sets forth certain procedures for
22 processing and approving development agreements in the City and County of San Francisco
23 (the "City").
24 (c) In April 2011, the Port Commission (the "Port") selected Forest City
25 Development California, Inc., a California corporation, through a competitive process to

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

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

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

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

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

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

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

Section 2. Environmental Findings.

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

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

Section 3. Consistency Findings.

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

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

Section 4. Public Trust Findings.

At a public hearing on September ~~12~~26, 2017, the Port Commission consented to the Development Agreement and approved the trust exchange agreement and the DDA, subject to Board of Supervisors' approval, finding that the Project would be consistent with and further the purposes of the common law public trust and statutory trust under the Burton Act (Stats. 1968, ch. 1333) by Resolution Nos. 17-44 and 17-47, ~~a copy~~ copies of which ~~is~~are in Board File No. 170863. The Board of Supervisors adopts and incorporates in this ordinance by reference the Port Commission's public trust findings.

Section 5. Approval of Development Agreement.

The Board of Supervisors:

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

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

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

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

Section 6. Administrative Code Chapter 56 Waivers.

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

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

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

Section 7. Other Administrative Code Waivers.

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

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

Section 8. Planning Code Waivers.

The Board of Supervisors:

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

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

Section 9. Subdivision Code Waivers.

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

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

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

Section 10. Authorization.

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

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

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

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

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

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

Section 12. Effective and Operative Dates.

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

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

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

By: [signature]
JOANNE SAKAI
Deputy City Attorney

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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 170863 **Date Passed:** November 14, 2017

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

October 19, 2017 Budget and Finance Committee - CONTINUED

October 26, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 26, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

October 31, 2017 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

November 14, 2017 Board of Supervisors - FINALLY PASSED

Ayes: 9 - Breed, Cohen, Farrell, Fewer, Peskin, Ronen, Safai, Sheehy and Yee
Absent: 2 - Kim and Tang

File No. 170863

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 11/14/2017 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

11/15/17

Date Approved

VERTICAL DDA EXHIBIT R

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

[____________________]
[____________________]
[____________________]
Attn: [____________]

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Vertical Disposition and Development Agreement)
(Development Agreement)

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**"), effective as of [____________], (the "**Effective Date**"), is entered into by and between [__________________], a [________________] ("**Vertical Developer**" or "**Transferor**"), and [____________________], a [________________] ("**Transferee**").

RECITALS:

A. The City and County of San Francisco, a municipal corporation (the "**City**"), operating by and through the San Francisco Port Commission ("**Port**") and Vertical Developer are parties to that certain Vertical Disposition and Development Agreement dated as of [___________], 20[__], for certain property located in the City and County of San Francisco, California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "**Property**"), **[Note: add if applicable any intervening amendment and/or assignments]** (as [amended] [and] [assigned], the "**Vertical DDA**"). Terms used herein but not defined herein shall have the meanings ascribed to such terms in the Vertical DDA.

B. FC Pier 70, LLC, a Delaware limited liability company ("**Horizontal Developer**") and the City entered into that certain Development Agreement (the "**Development Agreement**") dated as of [___________], 2018 for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**28-Acre Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on [________], 2018 as Document No. [____________].

C. The Development Agreement was assigned by Horizontal Developer to Vertical Developer by that certain Development Agreement Assignment and Assumption Agreement dated as of [____________], 20[xx] and recorded in the Official Records of the City and County of San Francisco on [____________], 20[xx] as Document No. [______________]. **[Note: add if applicable any intervening amendment and/or assignments]**

D. The Property is located within the 28-Acre Site. The Vertical DDA and the Development Agreement **[Note: add other agreements if applicable]** are referred to herein collectively, as the "**Property Agreements**".

E. Vertical Developer and Transferee have entered into an agreement (the "**Purchase Agreement**") pursuant to which Vertical Developer has agreed to assign all of its right, title and interest in and to the Property Agreements to Transferee, and Transferee has agreed to assume all of Vertical Developer's right title and interest in and to the Property Agreements from Vertical Developer.

F. In order to consummate the transactions contemplated by the Purchase Agreement, Vertical Developer desires to assign and Transferee desires to assume the Property Agreements on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Vertical Developer and Transferee agree as follows:

1. Assignment By Vertical Developer. Vertical Developer hereby assigns to Transferee as of the Effective Date each and all of the right, title, interest and obligations of Vertical Developer under the Property Agreements and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to the Property Agreements.

2. Assumption By Transferee.

2.1. Assumption by Transferee. Transferee hereby assumes from Vertical Developer as of the Effective Date each and all of the right, title, interest and obligations of Vertical Developer under the Property Agreements and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to the Vertical DDA or between City and Vertical Developer pursuant to the Development Agreement. Transferee hereby acknowledges that Transferee has reviewed the Property Agreements and agrees to be bound by the Property Agreements and all conditions and restrictions to which Vertical Developer is subject under the Vertical DDA and to which Developer is subject under the Development Agreement to the extent applicable to the Property.

2.2 **[Note: add if applicable to residential rental projects] [To be confirmed-subject to further modification]** Costa-Hawkins Waiver. Without limiting the foregoing assumption of rights and obligations by Transferee, Transferee specifically acknowledges that the Development Agreement and the DDA, which includes the Affordable Housing Plan attached thereto as Exhibit B3, provide regulatory concessions and significant public investment to the 28-Acre Site and Parcel K South that directly reduce development costs at the 28-Acre Site. The regulatory concessions and public investment include a direct financial contribution of net tax increment and other forms of public assistance specified in California Government Code section 65915. These public contributions result in identifiable, financially sufficient, and actual cost reductions for the benefit of Developer and Vertical Developers under California Government Code section 65915. In consideration of the City's direct financial contribution and other forms of public assistance, the parties understand and agree that the Costa-Hawkins Act does not apply to any BMR Unit or Inclusionary Units developed under the AHP for the 28-Acre Site.

3. Representations and Warranties of Vertical Developer. Vertical Developer hereby makes the following representations and warranties to Transferee, Port, and the City as of the Effective Date:

3.1 Status. Vertical Developer is a [_______________] duly organized, validly existing and in good standing under the laws of the State of [____________] and is authorized to do business in the State of California and is in good standing therein.

3.2 Authority; No Conflicts. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Vertical Developer. The person signing this Agreement on behalf of Vertical Developer has full power and authority to sign this Agreement on Vertical Developer's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject.

4. Representations and Warranties of Transferee. Transferee hereby makes the following representations and warranties to Vertical Developer, Port, and the City as of the Effective Date:

4.1 Status. Transferee is a [_______________] duly organized, validly existing and in good standing under the laws of the State of [____________] and is authorized to do business in the State of California and is in good standing therein.

4.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Transferee. The person signing this Agreement on behalf of Transferee has full power and authority to sign this Agreement on Transferee's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Transferee is a party or to which Transferee is subject

4.3 Investigation of Property; No Port or City Representations. Transferee has conducted a thorough investigation and due diligence of the Property. Transferee has reviewed and is familiar with the terms and conditions of the Property Agreements. Neither Port nor City has made any representations or warranties with respect to the condition of the Property.

5. Release of City Parties and the State Lands Indemnified Parties. Transferee, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges City Parties and the State Lands Indemnified Parties under the Vertical DDA of all Losses against the City Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the City Parties arising prior to the Effective Date.

Transferee understands and expressly accepts and assumes the risk that any facts concerning the Losses released, waived, and discharged in this Agreement includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the claims

released, waived, and discharged in this Agreement, Transferee expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

BY PLACING ITS INITIALS BELOW, TRANSFEREE SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

TRANSFEREE INITIALS: ____________

6. General Provisions.

6.1 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

6.2 Notices. The provisions of Section 21.1 of the Vertical DDA and Section 14.1 of the Development Agreement are incorporated by reference with the same effect as if set forth herein; provided, however, the address for Transferee is as follows:

[____________]
[____________]
[____________]
Attn: [____________]

With a copy to:

[____________]
[____________]
[____________]
Attn: [____________]

6.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

6.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument.

6.5 Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

6.6 Amendment to Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

6.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

6.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

6.9 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

6.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

6.11 Partial Invalidity. If any portion of this Agreement as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

6.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Agreement; (b) it has executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared by Horizontal Developer's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Vertical Developer because Horizontal Developer's counsel prepared this Agreement in its final form.

6.13 Defined Terms. All capitalized terms not defined herein are set forth in the Vertical DDA.

[the remainder of this page has been intentionally left blank]

RELEASE

In accordance with Section 10.1 of the Development Agreement, the City hereby releases and discharges [insert Vertical Developer ("**Transferor**")] from all obligations that are transferred to, and assumed by, [insert transferee ("**Transferee**")] under the foregoing Assignment and Assumption Agreement between Transferor and Transferee, dated as of [____________], 20XX (the "**Assignment and Assumption Agreement**"), to which this Release is attached. All capitalized terms not defined in this Release are as defined in the Assignment and Assumption Agreement.

The City acknowledges that this release is made with the advice of counsel regarding its consequences and effects. The City agrees this release covers unknown claims and waives the benefit of California Civil Code § 1542, which provides as follows:

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:

Director of Planning

Date:

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

By:____________________________

____
Director of Planning

Date:____________________________

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

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

VERTICAL DDA EXHIBIT S

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

[____________________]
[____________________]
[____________________]
Attn: [____________]

DEVELOPMENT AGREEMENT ASSIGNMENT AND ASSUMPTION AGREEMENT

This DEVELOPMENT AGREEMENT ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**"), effective as of [____________], (the "**Effective Date**"), is entered into by [____________________], a [____________________] ("**Horizontal Developer**" or "**Assignor**"), and [____________________], a [____________________] ("**Vertical Developer**" or "**Assignee**").

RECITALS:

A. Horizontal Developer and the City and County of San Francisco, a municipal corporation (the "**City**") entered into that certain Development Agreement (the "**Development Agreement**") dated as of [____________], 2018 for reference purposes, with respect to certain real property leased by Horizontal Developer pursuant to that certain Lease No. L-XXX dated as of [__________], 2018 (the "**Master Lease**"), between Horizontal Developer and the City, operating by and through the San Francisco Port Commission ("**Port**"), as such property is more particularly described in the Master Lease (the "**28-Acre Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco ("**Official Records**") on [__________], 2018 as Document No. [______________] and a Memorandum of the Master Lease was recorded in the Official Records on [__________], 2018 as Document No. [______________]. **[Note: add if applicable any intervening amendment and/or assignments]**

B. The City, operating by and through Port and Vertical Developer are parties to that certain Vertical Disposition and Development Agreement dated as of [______________], 20XX, for certain property located in the City and County of San Francisco, California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "**Transferred Property**") **[Note: add if applicable any intervening amendment and/or assignments]** (the "**Vertical DDA**"). The Transferred Property is located within the 28-Acre Site.

C. Under Section 10.1 of the Development Agreement, the initial Vertical Developer of each Development Parcel will be assigned specified rights and obligations under the Development Agreement by a recorded Assignment and Assumption Agreement, which Assignment and Assumption Agreement will provide, among other things, for the City to release Horizontal Developer from obligations under the Development Agreement to the extent they are assumed by the Vertical Developer, which release will be effective as to the City when evidenced by the signature of the City's Planning Director or his or her designee, and approved as to form by

the City Attorney. Delivery of this Agreement is a condition to Close of Escrow under the Vertical DDA.

D. Pursuant to the Development Agreement, Horizontal Developer desires to assign all of its rights, title and interest under the Development Agreement with respect to the Transferred Property and Vertical Developer desires to assume all such rights, title and interest from Horizontal Developer on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Horizontal Developer and Vertical Developer agree as follows:

1. Assignment By Horizontal Developer. Horizontal Developer hereby assigns to Vertical Developer as of the Effective Date each and all of the right, title, interest and obligations of Horizontal Developer under the Development Agreement with respect to the Transferred Property. Horizontal Developer retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the 28-Acre Site for which the DDA remains in effect.

2. Assumption By Vertical Developer.

2.1 Assumption by Vertical Developer. Vertical Developer hereby assumes from Horizontal Developer as of the Effective Date each and all of the right, title, interest and obligations of Horizontal Developer under the Development Agreement with respect to the Transferred Property. Vertical Developer hereby acknowledges that Vertical Developer has reviewed the Development Agreement and agrees to be bound by the Development Agreement and all conditions and restrictions to which Horizontal Developer is subject under the Development Agreement to the extent applicable to the Transferred Property.

2.2 **[Note: add if applicable to residential rental projects]** **[To be confirmed-subject to further modification]** Costa-Hawkins Waiver. Without limiting the foregoing assumption of rights and obligations by Vertical Developer, Vertical Developer specifically acknowledges that the Development Agreement and the DDA, which includes the Affordable Housing Plan attached thereto as Exhibit B3, provide regulatory concessions and significant public investment to the 28-Acre Site and Parcel K South that directly reduce development costs at the 28-Acre Site. The regulatory concessions and public investment include a direct financial contribution of net tax increment and other forms of public assistance specified in California Government Code section 65915. These public contributions result in identifiable, financially sufficient, and actual cost reductions for the benefit of Horizontal Developer and Vertical Developers under California Government Code section 65915. In consideration of the City's direct financial contribution and other forms of public assistance, the parties understand and agree that the Costa-Hawkins Act does not apply to any BMR Unit or Inclusionary Unit developed under the AHP for the 28-Acre Site.

3. Representations and Warranties of Horizontal Developer. Horizontal Developer hereby makes the following representations and warranties to Vertical Developer, Port and the City as of the Effective Date:

3.1 Status. Horizontal Developer is a [_______________] duly organized, validly existing and in good standing under the laws of the State of [___________] and is authorized to do business in the State of California and is in good standing therein.

3.2 Authority; No Conflicts. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Horizontal Developer. The person signing this Agreement on behalf of Horizontal Developer has full power and authority to sign this Agreement on Horizontal Developer's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Horizontal Developer is a party or to which Horizontal Developer is subject.

4. Representations and Warranties of Vertical Developer. Vertical Developer hereby makes the following representations and warranties to Horizontal Developer, Port and the City as of the Effective Date:

4.1 Status. Vertical Developer is a [_______________] duly organized, validly existing and in good standing under the laws of the State of [___________] and is authorized to do business in the State of California and is in good standing therein.

4.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Vertical Developer. The person signing this Agreement on behalf of Vertical Developer has full power and authority to sign this Agreement on Vertical Developer's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject.

5. Release of City Parties and the State Lands Indemnified Parties. Vertical Developer, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges City Parties and the State Lands Indemnified Parties under the Development Agreement of all Losses against the City Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims Horizontal Developer may have against the City Parties arising prior to the Effective Date.

Vertical Developer understands and expressly accepts and assumes the risk that any facts concerning the Losses released, waived, and discharged in this Agreement includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the claims released, waived, and discharged in this Agreement, Vertical Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

VERTICAL DEVELOPER INITIALS: ______________

6. General Provisions.

6.1 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

6.2 Notices. The provisions of Section 14.1 of the Development Agreement are incorporated by reference with the same effect as if set forth herein; provided, however, the address for Vertical Developer is as follows:

[________________]
[________________]
[________________]
Attn: [________________]

With a copy to:

[________________]
[________________]
[________________]
Attn: [________________]

6.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

6.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument.

6.5 Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a

part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

6.6 Amendment To Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

6.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

6.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

6.9 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

6.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

6.11 Partial Invalidity. If any portion of this Agreement as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

6.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Agreement; (b) it has executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared by Horizontal Developer's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Horizontal Developer because Horizontal Developer's counsel prepared this Agreement in its final form.

6.13 Defined Terms. All capitalized terms not defined herein are set forth in the Development Agreement.

[the remainder of this page has been intentionally left blank]

RELEASE

In accordance with Section 10.1 of the Development Agreement, the City hereby releases and discharges [insert Horizontal Developer ("**Horizontal Developer**")] from all obligations that are transferred to, and assumed by, [insert transferee ("**Vertical Developer**")] under the foregoing Assignment and Assumption Agreement between Horizontal Developer and Vertical Developer, dated as of [______________], 20XX (the "**Assignment and Assumption Agreement**"), to which this Release is attached. All capitalized terms not defined in this Release are as defined in the Assignment and Assumption Agreement.

The City acknowledges that this release is made with the advice of counsel regarding its consequences and effects. The City agrees that this release covers unknown claims and waives the benefit of California Civil Code § 1542, which provides as follows:

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

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

By:______________________________

____
Director of Planning

Date:____________________________

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

By:__________________________
Name: [Name of Deputy]
Deputy City Attorney

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

State of California)
County of ______________)

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

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

WITNESS my hand and official seal.

Signature _________________________ (Seal)
Signature of Notary Public

EXHIBIT S

EXHIBIT A

LEGAL DESCRIPTION OF TRANSFERRED PROPERTY

[INSERT LEGAL DESCRIPTION FROM VERTICAL DDA]

VDDA Schedule 3.1: CFD and Assessment Matters

All matters addressed in this Exhibit relate to the following actions, all of which the City has undertaken in accordance with the San Francisco Special Tax Financing Law (San Francisco Administration Code ch. 43, art. X), which incorporates the Mello-Roos Community Facilities Act of 1982 (Cal. Gov't Code §§ 53311-53368) (collectively, the "**CFD Law**"), by Board of Supervisors Resolution No. XX-XX (the "**Formation Resolution**") to implement the Financing Plan in the DDA between the Master Developer and the Port (collectively, the "**CFD Provisions**"). Unless specified otherwise, all statutory references in this Exhibit are to the California Government Code.

1. <u>Formation of a Special Tax District</u>. The City's actions in relation to the CFD Provisions include:

(a) formation of a community facilities district designated as "*City and County of San Francisco Special Tax District No. 2018-3 (Pier 70 Leased Properties)*" (the "**Special Tax District**") that includes the Property within its boundaries;

(b) designation of property for potential future annexation to the Special Tax District (the "**Future Annexation Area**");

(c) approval of a rate and method of apportionment (the "**Rate and Method**"), a copy of which is attached to the Formation Resolution, for the calculation and levy of the Facilities Special Tax, the Shoreline Special Tax, the Arts Building Special Tax, and the Services Special Tax (as each term is defined in the Rate and Method) against all taxable property in the Special Tax District (collectively, the "**Special Taxes**");

(d) recordation of the "**Notice of Special Tax Lien**" against the real property in the Special Tax District in the Official Records of the City and County of San Francisco, as document number __________ pursuant to California Government Code Section 53328.3;

(e) authorization to issue bonds secured by one or more of the Special Taxes ("**Bonds**");

(f) authorization to use Bond proceeds and Special Taxes to finance the construction, completion, and acquisition of improvements described in the Formation Resolution (the "**CFD Improvements**"); and

(g) authorization to levy and use Special Taxes in perpetuity to finance services described in the Formation Resolution such as capital maintenance and repair of the CFD Improvements (the "**Services**").

2. <u>**[Fee] [Leasehold]** Interest Subject to CFD Provisions</u>. The Vertical Developer acknowledges and agrees as follows.

(a) Its **[fee] [leasehold]** interest in the Property is subject to the levy of Special Taxes and the Vertical Developer will not have any right to amend the CFD Provisions.

(b) It is critical to each of the City, the Port, the Master Developer, and Vertical Developer that the construction and completion of the CFD Improvements required to develop the Property be coordinated in all respects (including cost, timing,

capacity, function, and type) with the construction and completion of the CFD Improvements for other property in the Special Tax District.

(c) If the Property were excluded from the Special Tax District, or the Special Taxes to be levied on the Property were reduced or eliminated, coordination of CFD Improvements required to develop the Property with CFD Improvements for other property in the Special Tax District would be materially adversely affected.

3. Cooperation with CFD Matters. The Vertical Developer agrees to the following with respect to the Special Tax District, the levy of the Special Taxes, and the issuance of any Bonds, at the Vertical Developer's sole expense.

(a) The Vertical Developer will:

i. if determined necessary by the City, and at the request of the City, cooperate with the City if the City decides to enter into a joint community facilities agreement or any other agreement necessary to finance CFD Improvements and Services (collectively, the "**JCFA**") that will be owned or operated by government agencies other than the City or its agencies.

(b) The Vertical Developer will not, at any time or in any manner, contest, protest, or otherwise challenge any of the following:

i. the formation of the Special Tax District;

ii. the designation of the Future Annexation Area;

iii. the authorization, levy, or amount of the Special Taxes on the Property;

iv. the authorization to issue the Bonds;

v. the CFD Improvements and Services to be financed by the Special Tax District; and

vi. the establishment of an appropriations limit for the Special Tax District.

(c) If required for the Special Tax District to levy Special Taxes or issue Bonds, the Vertical Developer will acknowledge that the Property is subject to the lien of the Special Tax District and the levy of Special Taxes and that the Special Tax District is authorized to issue Bonds.

(d) The Vertical Developer will not bring any action, suit, or proceeding against the Special Tax District or the City; provided, however, that after exhausting its appeal rights under the Rate and Method, the Vertical Developer may bring an action, suit, or proceeding against the Special Tax District or the City if it relates solely to an allegation that the Special Taxes have not been levied in accordance with the Rate and Method.

(e) The Vertical Developer will not take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken with respect to the Special Tax District's formation or the issuance of Bonds, including

when Special Taxes are first levied, the amount of Special Taxes, the apportionment of Special Taxes, and the use of the Special Taxes collected by the Special Tax District.

4. The following definitions apply to this Exhibit.

(a) "**Actual Knowledge**" means the knowledge that the person signing this VDDA has on the date of execution of this VDDA or has obtained from:

i. interviews with current officers and responsible employees of the Vertical Developer and its Affiliates that the person has determined are likely, in the ordinary course of their respective duties, to have knowledge of the matters set forth in this VDDA;

ii. a review of documents that the person determined were reasonably necessary to obtain knowledge of the matters set forth in this VDDA; or

iii. both, in any case without conducting any extraordinary inspection or inquiry except as prudent and customary in connection with the ordinary course of the Vertical Developer's current business and operations or contacting individuals who are no longer employees of the Vertical Developer or its Affiliates.

(b) "**Affiliate**" means any person that directly or indirectly, through one or more intermediaries:

i. exercises managerial control over the Vertical Developer; or

ii. is under managerial control of the Vertical Developer; and

iii. in each case, about whom information could be material to potential investors deciding whether to invest in future Bonds.

(c) "**Related Property**" means any real property interest owned or held by the Vertical Developer or any of its Affiliates.

5. Compliance. The Vertical Developer represents and warrants as follows and agrees that if its representations and warranties are discovered to be untrue after the Effective Date of this VDDA, the Port may, in its discretion, elect to terminate this VDDA.

(a) With respect to Related Property located within the boundaries of a development project in California, except as set forth in **Attachment 1**, to Vertical Developer's Actual Knowledge, neither Vertical Developer nor Vertical Developer's Affiliates within the last five years have:

i. intentionally failed to pay when due any property taxes, special taxes, or assessments levied or assessed against the Related Property; or

ii. owned any interest in Related Property that became either tax-deeded to California or the subject of foreclosure proceedings for failure to pay property taxes, special taxes, or assessments levied or assessed against the Related Property.

(b) With respect to Related Property located within the boundaries of a development project outside of California, except as set forth in **Attachment 1**, to Vertical Developer's Actual Knowledge, neither Vertical Developer nor Vertical

Developer's Affiliates within the last five years have owned any interest in Related Property that became either tax-deeded to a governmental agency or the subject of foreclosure proceedings for failure to pay special taxes or assessments that secure the payment of bonds and that were levied or assessed against the Related Property.

(c) Except as set forth in **Attachment 1**, neither the Vertical Developer nor its Affiliates have failed to comply in the last five years under any continuing disclosure agreement relating to Related Property in projects in California.

6. Acknowledgment of the Rate and Method. The Rate and Method has been provided to the Vertical Developer prior to the Effective Date of this VDDA. The Vertical Developer has read and, if deemed necessary, consulted with counsel, regarding the provisions of the Rate and Method.

7. Issuance of Bonds. This Section will apply to the Special Tax District's issuance of Bonds at any time.

(a) The Vertical Developer will provide, at the request of the City or any Financing Participant (as defined in subsection (c) below), certificates or other documents executed by each secured lender that provided funds for the Vertical Developer's development of the Property signifying the lender's acknowledgment of:

i. the imposition of the Special Taxes on the Property;

ii. the issuance of Bonds; and

iii. the Special Tax District's foreclosure rights if the Vertical Developer is delinquent in the payment of Special Taxes.

(b) The Vertical Developer acknowledges that Bonds may be issued in one or more series over time, that the issuance of each series of Bonds may require information and documents to be provided by the Vertical Developer, and that the timely provision of that information and documents for each series of Bonds is critical for the Master Developer and the Port to achieve their respective financial goals. The Vertical Developer's obligations will arise with the issuance of each series of Bonds and continue as provided in any related continuing disclosure agreement.

(c) The Vertical Developer will not interfere with or impede the issuance of any series of Bonds issued by or in connection with the Special Tax District and will, at the Vertical Developer's expense, provide information in connection with each series of Bonds as requested by any of the following (collectively, the "**Financing Participants**"):

i. the City, the Port, and any other JCFA Party, or any of their agents, including bond counsel and disclosure counsel;

ii. appraisers engaged to appraise the Property;

iii. market absorption consultants;

iv. underwriters and underwriters' counsel;

v. financial advisors associated with the Bonds or the Special Tax District; and

vi. persons providing credit enhancement for the Bonds or the Special Tax District.

(d) The Vertical Developer will provide, at Vertical Developer's expense, required information, which may include:

i. a description of the Vertical Developer's financing sources to develop the Property;

ii. a description of the proposed development project and the ownership structure of the Vertical Developer;

iii. the status of the Property, including the rent roll and vacancy history;

iv. any history of delinquencies and defaults by the Vertical Developer and its Affiliates, including the information disclosed in **Attachment 1**;

v. the Vertical Developer's financial statements, which may be consolidated with its parent company and, for publicly traded companies where the Vertical Developer's financial statements are consolidated with the publicly traded company, may be limited to those financial statements required by SEC Regulations;

vi. other financial and operating information, including a development pro forma, with respect to the Vertical Developer and the Property;

vii. certificates requested by the Financing Participants, which may include representations on:

1. the due formation of the Vertical Developer;

2. the due execution of documents executed by the Vertical Developer in connection with the Special Tax District or any Bonds;

3. no material litigation or investigation by or against the Vertical Developer or its Affiliates that seeks to prohibit, restrain, or enjoin the development of the Property, or in which the Vertical Developer or its Affiliates may be adjudicated as bankrupt or discharged from any or all debts or obligations or granted an extension of time to pay or a reorganization or readjustment of its debts, or which, if determined adversely to the Vertical Developer or its Affiliates, could adversely affect the development of the Property and the payment of the Special Taxes; and

4. the accuracy of the information provided in connection with the issuance of any series of Bonds, including the information in all disclosure documents; and

viii. opinions of counsel to the Vertical Developer requested by any of the Financing Participants, which may include any matter listed in **clause (vii)** of

this Subsection and a 10b-5 opinion regarding any disclosure about the Vertical Developer and its Affiliates in the offering statement used to market the Bonds.

(e) The City will decide on the amount and application of any capitalized interest in consultation with the Master Developer, and the Vertical Developer will not contest the amount and application of capitalized interest.

(f) This Subsection will apply if any of the Financing Participants requires a renewable letter of credit, cash, or other form of credit enhancement ("**Special Tax Security**") in connection with the issuance of the Bonds.

i. The Vertical Developer will provide Special Tax Security that is acceptable to the Financing Participants in an amount no greater than two years' levy of Special Taxes against the Property by the Special Tax District, as reasonably determined by any of the Financing Participants;

ii. In addition, if the Master Developer (or any current owner of the Property) posted Special Tax Security with respect to the Property before the Close of Escrow, the Vertical Developer will provide replacement Special Tax Security with respect to the Property acceptable to the Financing Participants. The Vertical Developer's posting of replacement Special Tax Security will be a condition precedent to the Effective Date of this VDDA.

iii. The Vertical Developer acknowledges that the Special Tax Security is intended to secure the Special Tax payments by the Vertical Developer and its successors and assigns, but not any sub-tenants of less than the whole of the Property or apartment dwellers.

iv. Any letter of credit must be provided by an issuer acceptable to the Financing Participants and have a minimum "A" long-term debt rating (or the equivalent "A" designation) from both Standard & Poor's and Moody's Investors Service, unless the Financing Participants agree to a lower rating.

(g) Any reimbursements from the proceeds of any Bonds or directly from any Special Taxes (or prepayments of Special Taxes) for the costs of authorized CFD Improvements, returns of deposits, or payments of the costs of issuance will be the property of the Master Developer (as between the Master Developer and the Vertical Developer), regardless of the time of the original payment or the identity of the party that made the payment. Should the Vertical Developer receive any such reimbursements, or should the Vertical Developer receive the return or reimbursement of any deposits with any governmental entity or utility related to authorized CFD Improvements, the Vertical Developer will endorse and tender the payment to the Master Developer immediately.

(h) The Vertical Developer will execute and perform under any continuing disclosure agreement as requested by any of the Financing Participants. In addition, if, prior to the Effective Date, the Master Developer has entered into a continuing disclosure agreement, the Vertical Developer will assume the obligations under the continuing disclosure agreement with respect to the Property, in the form and manner required by the Financing Participants and the continuing disclosure agreement. The assumption of any continuing disclosure agreement will be a condition precedent to the Effective Date of this VDDA.

8. Cooperation to Amend the Special Tax District.

(a) The Vertical Developer acknowledges that the Port, the Master Developer, or the City may request proceedings to amend any CFD Provisions ("**Change Proceedings**"). **Subsection 8(b)** will apply so long as the changes contemplated by the Change Proceedings:

i. do not increase the Special Tax rates to be levied on the Property above Special Tax rates for the Property, escalated to the date of calculation, under the Rate and Method;

ii. do not change the Rate and Method so that the Vertical Developer is taxed sooner than under the current version of the Rate and Method; and

iii. do not result in more favorable treatment of one or more other tenants or property owners in the Special Tax District compared to the treatment of the Vertical Developer and the Property.

(b) Subject to **Subsection 8(a)**, the Vertical Developer shall not contest, protest, or otherwise challenge Change Proceedings to the Special Tax District.

9. Annexation of Property to the Special Tax District.

(a) The Vertical Developer acknowledges that in accordance with the CFD Law:

i. the City has designated certain property as a Future Annexation Area to the Special Tax District;

ii. from time to time, parcels of the Future Annexation Area may be annexed to the Special Tax District by execution of a unanimous written consent of the owners of the parcels of Future Annexation Area to be annexed without a public hearing or election; and

iii. the Master Developer, City, and Port may also request annexation of additional property to the Special Tax District.

(b) The Vertical Developer will not:

i. contest, protest, or otherwise challenge the annexation of any additional property to the Special Tax District as described in **Section 9(a)** above, or the imposition of the levy of Special Taxes on the annexed property; or

ii. take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken by the Master Developer or the owners of property (including the owners of the Future Annexation Area) with respect to the annexation of additional property to the Special Tax District.

10. Activity in Other Special Tax Districts. The Vertical Developer acknowledges that other parcels in the SUD are included in a separate special tax district formed by the City (the "**Other STD**") and agrees not to:

(a) contest, protest, or otherwise challenge the formation, implementation, levy of special taxes in, or issuance of bonds by the Other STD, or the annexation of

additional property to, or any Change Proceedings conducted with respect to, the Other STD; or

(b) take any other action that would in any way interfere with the operation of the Other STD or decisions made or actions taken by the City, the Port, and the Master Developer with respect to the Other STD.

11. Shortfall Provisions.

(a) All capitalized terms used in this **Section 11** that are not otherwise defined herein shall have the meaning given such terms in the Appendix to the Horizontal DDA (the "**Appendix**").

(b) The Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Premises until the IFD Termination Date.

(c) If the Vertical Developer initiates a Reassessment on the Premises in violation of **Section 11(b)** above, then the following shall occur:

a. Vertical Developer will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

b. The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

12. Acquisition Agreement.

The Vertical Developer acknowledges that the Vertical Developer is not and will not become either a party, a third-party beneficiary, or an assignee to the Acquisition and Reimbursement Agreement between the Master Developer and the Port (the "**Acquisition Agreement**"), and that any reimbursements from the proceeds of Bonds or Special Taxes for the costs of authorized CFD Improvements under the Acquisition Agreement will be the property of the Master Developer, regardless of the time of the original payment or the identity of the party that made the payment. Should the Vertical Developer receive any reimbursements, or should the Vertical Developer receive the return or reimbursement of any deposits that were intended to be financed with Special Taxes or Bonds, the Vertical Developer shall endorse and tender the payment to the Master Developer promptly. The Vertical Developer further agrees not to contest, protest or otherwise challenge the rights or obligations of the Master Developer or the Port under the Acquisition Agreement.

13. General Provisions.

(a) The Vertical Developer will pay prior to delinquency all Special Taxes levied on the Property while the Vertical Developer or any Affiliate has a **[fee] [leasehold]** interest in the Property.

(b) The Vertical Developer will not petition, support, encourage, consent to, or implement any action seeking to reduce or repeal the levying of all or any part of the

Special Taxes in the Special Tax District, except at the written request of the Port, the Master Developer, and the City.

(c) The Vertical Developer will disclose the requirements of this Exhibit to any tenant of the entirety of the Property and require each such tenant to enter into an agreement with the Vertical Developer, the Port, and the Master Developer assuming the Vertical Developer's obligations under this Exhibit. This paragraph will not apply to any rentals to apartment dwellers or tenants of less than all of the Property. If required, the Vertical Developer will comply with disclosures required by Section 53341.5.

(d) The Master Developer is an express third-party beneficiary of the covenants and agreements of this Exhibit and may enforce each provision against the Vertical Developer as if the Master Developer were a party to this VDDA.

(e) The Port is required to provide to the Vertical Developer a notice of special tax pursuant to Section 53341.5 regarding the Special Taxes in the Rate and Method (the "**Notice of Special Tax**"). The Notice of Special Tax is attached as **Exhibit XXXX** and the Vertical Developer shall execute and return to the Port a copy of the Notice of Special Tax within three business days after executing this VDDA.

(f) The covenants and provisions contained in this Exhibit remain in effect for the term of this VDDA.

Attachment 1: Certain Representations of Vertical Developer
Exhibit XXXX: Notice of Special Tax

VDDA SCHEDULE 4.2
PORT DISCLOSURE MATTERS
[if applicable]

[To be prepared and inserted prior to execution]

VDDA SCHEDULE 12.4-1
DESCRIPTION OF DEFERRED INFRASTRUCTURE
[if applicable]

[To be prepared and inserted prior to execution]

Schedule 15.3

Remedies for Failure to Commence Construction

[For Residential Fee Parcels Only]

1. Liquidated Damages.

a. If the Commencement of Residential Construction has not occurred on or prior to the Required Construction Commencement Date, then Vertical Developer will pay to Port, as liquidated damages, an amount equal to [insert amount that is 2x the daily special tax obligation for the Property] for each day that the Commencement of Residential Construction is delayed beyond the Required Construction Commencement Date (the "**Liquidated Amount**"). Vertical Developer will pay to Port the Liquidated Amount within ten (10) business days of demand therefor; provided, however, Port's delay in making any such demand will not be deemed to be a waiver of its rights to demand such amounts.

b. The Liquidated Amount will be applied by Port as follows:

i. First, to pay any taxes and assessments on the Property (including CFD and IFD assessments) to the extent then due and payable;

ii. Second, all remaining proceeds to Port to be treated as Land Proceeds in accordance with Section ___ of the Financing Plan (Exhibit C1 to the DDA).

c. THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES, IN THE EVENT OF THE FAILURE TO CAUSE THE COMMENCEMENT OF RESIDENTIAL CONSTRUCTION PRIOR TO THE REQUIRED CONSTRUCTION COMMENCEMENT DATE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE LIQUIDATED AMOUNT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: PORT:_________ VERTICAL DEVELOPER:__________

2. Repurchase of Property.

a. Notice. If Commencement of Residential Construction does not occur by the date that is twelve (12) months after the Required Construction Commencement Date (a "**Commencement Default**"), Port will promptly deliver notice of the Commencement Default to Horizontal Developer and Vertical Developer (the "**Commencement Default Notice**").

b. Horizontal Developer Purchase Option. Following receipt of a Commencement Default Notice, Horizontal Developer will have an exclusive, one-time right to purchase the Property from Vertical Developer for a purchase price equal to eighty-five percent (85%) of the Acquisition Price (the "**Repurchase Price**") and otherwise on the following terms and conditions (the "**Horizontal Developer Purchase Option**"):

i. Horizontal Developer will have a period of thirty (30) days from receipt of such notice (the "**Horizontal Developer Exercise Period**") in which to notify Port and Vertical Developer in writing that it desires to exercise the Horizontal Developer Purchase Option (the "**Horizontal Developer Exercise Notice**").

ii. If Horizontal Developer timely delivers the Horizontal Developer Exercise Notice, then Vertical Developer will cooperate with Horizontal Developer to consummate such

acquisition within ninety (90) days of Vertical Developer's receipt of the Horizontal Developer Exercise Notice ("**Horizontal Developer Closing Period**").

iii. Any rights of Horizontal Developer under this Schedule 15.3 may be exercised by or through its nominee or designee which is an Affiliate of Horizontal Developer.

c. Port Purchase Option. If Horizontal Developer fails or declines to exercise the Horizontal Developer Purchase Option within the Horizontal Developer Exercise Period, or if Horizontal Developer exercises the Horizontal Developer Purchase Option and thereafter fails to consummate the same within the Horizontal Developer Closing Period whether through revocation in accordance with [Section 2(e) below] or some other event (collectively, "**MD Period**"), then Port will have an exclusive, one-time right to (1) purchase the Property for the Repurchase Price from Vertical Developer or (2) cause Vertical Developer to sell the Property to a Successful Respondent for not less than the Repurchase Price, and otherwise on the following terms and conditions (the "**Port Repurchase Option**"):

i. Port will have a period of six (6) months from the expiration of the applicable MD Period in which to notify Vertical Developer in writing that it desires to exercise the Port Repurchase Option (the "**Port Exercise Notice**").

ii. If Port timely delivers the Port Exercise Notice, then Port may elect, in its sole discretion, to either:

(1) acquire the Property directly from Vertical Developer, in which case, Vertical Developer will cooperate with Port to consummate such acquisition within ninety (90) days of Vertical Developer's receipt of the Port Exercise Notice; or

(2) issue a request for proposal for the Property or such other solicitation as determined by Port (collectively, "**RFP**"), which RFP will require a minimum bid of no less than the Repurchase Price to qualify as a potential purchaser of the Property. Vertical Developer will cooperate with Port and the successful respondent to the RFP ("**Successful Respondent**") to consummate the acquisition of the Property by the Successful Respondent within ninety (90) days of Port's selection of the Successful Respondent. Vertical Developer will have no rights to any amount or other consideration paid by the Successful Respondent to Port for the Property that exceeds the Repurchase Price.

d. Vertical Developer Obligations. In connection with the closing of the Horizontal Developer Purchase Option or the Port Purchase Option (collectively, the "**Repurchase Closing**"), Vertical Developer will deliver into escrow, at least five (5) days prior to the contemplated Repurchase Closing, (i) a quitclaim deed with respect to the Property, subject only to Permitted Exceptions and (ii) a reconveyance of any Mortgage encumbering the Property, together with irrevocable instruction from the applicable Lender(s) to record the same upon payment to such Lender in accordance with Section 3 below.

e. Revocation. Notwithstanding anything herein to the contrary, each of Horizontal Developer and Port will have the right, for any reason or no reason, to rescind the Horizontal Developer Exercise Notice or Port Exercise Notice, as applicable, at any time before the consummation of the Closing by delivering written notice to Vertical Developer and the other Party, in which event the party revoking such exercise of its right will have no further right to purchase or repurchase the Property pursuant to this Agreement.

f. Application of Repurchase Price. Upon the Repurchase Closing in accordance with this Schedule 15.3 (in any case, a "**Repurchase**"), the Repurchase Price will be applied as follows: (i) first, to pay any taxes and assessments on the Property (including CFD and IFD assessments) to the extent then due and payable; (ii) second, to Port to pay any unpaid amounts required to be paid under this Agreement, including, but not limited to, any unpaid Liquidated Amount; (iii) third, to pay the Closing Costs [of Vertical Developer, Horizontal

Developer, and Port, as applicable,] associated with the Repurchase; (iv) fourth, to any Lender to satisfy the indebtedness evidenced by the Mortgage; and (v) fifth, to Vertical Developer.

3. Rights of Lenders.

Without limiting the rights afforded to Lenders pursuant to Article 16 (Financing; Rights of Lenders) of this Agreement, following a Commencement Default and notice by Port thereof, any Lender will have the right, but not the obligation, to notify Port and Horizontal Developer that it intends to pursue a [Lender Acquisition. Upon receipt of such notice, neither Horizontal Developer nor Port will pursue a its purchase or repurchase right hereunder, as applicable for so long (and only for so long) as Lender is diligently pursuing such Lender Acquisition, and all time periods set forth herein in connection with Horizontal Developer Purchase Option and Port Repurchase Option will be tolled for such period of time.

4. Termination.

The Unless terminated sooner as provided for in this Schedule 15.3, the Horizontal Developer Purchase Option and the Port Repurchase Option will automatically terminate, and will be of no force or effect, upon the earliest of (a) the date upon which a Repurchase is consummated, (b) so long as no Horizontal Developer Exercise Notice or Port Developer Notice has been delivered, the date upon which Commencement of Residential Construction occurs, and (c) the date upon which a Lender Acquisition is consummated.

5. Anti-Flip Protections.

If the Property is acquired by Horizontal Developer, and Horizontal Developer thereafter Transfers the Property to any non-Affiliate prior to the Commencement of Residential Construction, then upon the consummation of such Transfer, Horizontal Developer will pay to Port an amount equal to the net sales proceeds of such Transfer less the Repurchase Price, and Port will treat such amounts as Land Proceeds in accordance with [Section ____] of the Financing Plan (Exhibit C1 to the DDA)]. [Note: Parties discussing whether payment will be through accounting].For purposes of this Schedule 15.3, "**Transfer**" includes the sale, transfer, or conveyance of the Property by deed to another party.

6. Third Party Beneficiary.

Horizontal Developer is an intended third-party beneficiary of the terms and provisions of the Agreement set forth in this Schedule 15.3, and Horizontal Developer will have the same rights to enforce this Schedule 15.3 as if Horizontal Developer were a direct party hereto.

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[Applicable to Fee Parcels Only]

VDDA SCHEDULE 16

FINANCING PROVISIONS

1.1. *Mortgages.*

(a) **Right to Grant Mortgages**. Port acknowledges that Vertical Developer may from time to time grant a mortgage, deed of trust or other security instrument (each a "**Mortgage**") encumbering the Property. The beneficiary of any such Mortgage is referred to herein as a "**Lender**". Any Lender that constitutes a Bona Fide Institutional Lender shall have the rights set forth in this ***Schedule 16***.

"**Bona Fide Institutional Lender**" means any one or more of the following, whether acting in its own interest and capacity or in an agency or a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lenders: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a licensed California finance lender, any agency or instrumentality of the United States government or any state or City governmental authority, a pension fund, an investment banking or merchant banking firm, or any entity directly or indirectly sponsored or managed by any of the foregoing, or other lender, all of which, at the time a Mortgage is recorded in favor of such entity, owns or manages assets of at least Five Hundred Million Dollars ($500,000,000) in the aggregate (or the equivalent in foreign currency); (ii) any Affiliate of any of the foregoing; or (iii) an Historic Preservation Tax Credit or Low Income Housing Credit investor or Affiliate thereof that has given a loan to Vertical Developer to optimize or utilize effectively the Historic Preservation Tax Credits or Low Income Housing Tax Credits, as applicable.

(b) **Mortgages Subject to this Agreement**. With the exception of the rights expressly granted to Lenders in this ***Schedule 16***, the execution and delivery of a Mortgage will not give or be deemed to give a Lender any greater rights than those granted to Vertical Developer hereunder.

(c) **Transfer by Lenders**. A Lender may transfer or assign all or any part of or interest in any Mortgage without the consent of or notice to any Party; provided, however, that Port will have no obligations under this Agreement to a Lender unless (i) such Lender is a Bona Fide Institutional Lender and (ii) Port is notified of such Lender. Furthermore, Port's receipt of notice of a Lender following Port's delivery of a notice or demand to Vertical Developer or to one or more Lenders under ***Section 1.4 of this Schedule 16*** (Lender's Obligations with Respect to the Property) will not result in an extension of any of the time periods in this ***Schedule 16*** including the cure periods specified in ***Section 1.5 of this Schedule 16*** (Provisions of Any Mortgage).

1.2. *Copy of Notice of Default to Lender.*

(a) **Copy to Lender**. Whenever Port delivers any notice or demand to Vertical Developer for any breach or default by Vertical Developer in its obligations or covenants under this Agreement, Port will at the same time forward a copy of such notice or

demand to each Lender that has previously made a written request to Port for a copy of any such notices in accordance with ***Section 1.2(b) of this Schedule 16*** (Notice from Lender to Port). A delay or failure by Port to provide such notice or demand to any Lender that has previously made a written request therefor will extend, by the number of days until notice is given, the time allowed to such Lender to cure.

(b) <u>**Notice From Lender to Port**</u>. Each Lender is entitled to receive notices in accordance with ***Section 1.2(a) of this Schedule 16*** (Copy to Lender) provided such Lender has delivered a notice to Port in substantially the following form:

> "The undersigned does hereby certify that it is a Lender, as such term is defined in that certain Vertical Disposition and Development Agreement entered into by and between the City and County of San Francisco, operating by and through the San Francisco Port Commission ("Port") and [insert name of Vertical Developer], as Vertical Developer (the "VDDA"), of Vertical Developer's interest in the property subject to the VDDA, a legal description of which is attached hereto as Exhibit A and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the VDDA to Vertical Developer by Port be sent to the undersigned at the following address: ________________________."

If Lender desires to have Port acknowledge receipt of Lender's name and address delivered to Port pursuant to this ***Section 1.2(b)***, then such request must be made in bold, underlined and in capitalized letters.

1.3. ***Lender's Option to Cure Defaults***.

(a) Before or after receiving any notice of failure to cure referred to in ***Section 1.2 of this Schedule 16*** (Copy of Notice of Default to Lender), each Lender will have the right (but not the obligation), at its option, to commence to cure or cause to be cured any Event of Default, within the same period afforded to Vertical Developer hereunder plus an additional period of (i) fifteen (15) days with respect to a monetary Event of Default and (ii) forty-five (45) days with respect to a non-monetary Event of Default that is susceptible of cure by such Lender without obtaining title to the applicable property subject to the applicable Mortgage or acquiring the ownership interests in Vertical Developer, as applicable.

(b) If a non-monetary Event of Default cannot be cured by Lender without obtaining title to the Property, or applicable portion thereof, Port will refrain from exercising its right to terminate this Agreement and will permit the cure by a Lender of such Event of Default if, within the cure period set forth in ***Section 1.3(a) of this Schedule 16***: (i) such Lender notifies Port in writing that such Lender intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property or ownership interests, as applicable; (ii) such Lender commences foreclosure proceedings whether by non-judicial foreclosure, judicial foreclosure, by appointment of a receiver, or deed (or assignment) in lieu of foreclosure, within sixty (60) days after giving such notice, and diligently pursues such proceedings to completion; and (iii) after obtaining title, such Lender, subject to ***Section 1.4 of this Schedule 16*** (Lender's Obligations with Respect to the Property), diligently proceeds to cure those Events of Default that are susceptible of cure by such Lender. The period from the date Lender so notifies Port

until a Lender acquires title to applicable property subject to the applicable Mortgage or some other party acquires such interest through foreclosure is herein called the "**Foreclosure Period**."

(c) Nothing in this ***Schedule 16*** will preclude Port from exercising any rights or remedies under this Agreement against Vertical Developer (other than a termination of this Agreement) with respect to any other Events of Default during the Foreclosure Period.

(d) Notwithstanding the foregoing, no Lender will be required to cure any non-monetary Event of Default that is specific or personal to Vertical Developer which cannot be cured by Lender (by way of example and not limitation, Vertical Developer bankruptcy, or the failure to submit required information in the possession of Vertical Developer). Lender's acquisition of title to applicable property subject to the applicable Mortgage, or the completion of a foreclosure (or assignment in lieu thereof), as applicable, will be deemed to be a cure of such Events of Default specific or personal to Vertical Developer. The foregoing will not excuse a Lender's failure to cure any continuing default that is curable by Lender.

(e) If a Lender is prohibited by any law, injunction, or any bankruptcy, insolvency or other judicial proceeding from commencing or prosecuting a foreclosure action, then the times specified for commencing or prosecuting such foreclosure action, as applicable, will be extended by each day of such prohibition.

1.4. ***Lender's Obligations with Respect to the Property.***

(a) **<u>Rights and Obligations upon Lender Acquisition</u>**. Except as set forth in this ***Schedule 16***, no Lender will have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to applicable property subject to the applicable Mortgage (referred to as "**Foreclosed Property**"). Except as otherwise provided herein (including, without limitation, ***Sections 1.4(b)—(d) of this Schedule 16***, a Lender (or its designee, successor or assign) or other winning bidder at a foreclosure sale (collectively, a "**Successor Owner**") that acquires title to any Foreclosed Property (a "**Lender Acquisition**") will take title subject to all of the terms and conditions of this Agreement to the extent applicable to the Foreclosed Property. Upon completion of a Lender Acquisition, Port will recognize the Successor Owner as Vertical Developer under this Agreement. Such recognition will be effective and self-operative without the execution of any further instruments; provided, upon request, at no cost to Port, Port will execute a written agreement recognizing Successor Owner. A Successor Owner, upon a Lender Acquisition, will be required promptly to cure all monetary defaults and all other ongoing defaults then reasonably susceptible of being cured by such Successor Owner to the extent not cured prior to completion of the Lender Acquisition. The foregoing obligation includes any obligation to cause the Commencement of Residential Construction, except as set forth in ***Section 1.4(c) of this Schedule 16*** (No Obligation to Commence Residential Construction).

(b) **Obligations of Lender Prior to Lender Acquisition**. Prior to a Lender Acquisition, Port will have no right to enforce any obligation under this Agreement against any Lender unless such Lender expressly assumes and agrees to be bound by this Agreement in a form reasonably approved in writing by Lender and Port, which form will be consistent with the terms of this Agreement (for the avoidance of doubt, the foregoing will not limit Port's rights and remedies against Vertical Developer notwithstanding any interest Lender may have in Vertical Developer or any right against any successor owner of the Property for a continuing default, as set forth in and subject to the limitations of this ***Schedule 16***). However, Lender agrees to comply during a Foreclosure Period with the terms, conditions and covenants of this

Agreement that are reasonably susceptible of being complied with by Lender prior to acquiring possession of a fee interest in the applicable property subject to the applicable Mortgage, including the payment of all sums due and owing hereunder.

(c) **Obligation to Commence Residential Construction**. Subject to ***Sections 1.4(d)*** (Obligation to Sell If Not Commence Residential Construction) and ***1.4(e)*** (Lender Agreement to Commence Residential Construction) ***of this Schedule 16***, any Lender who obtains title to Foreclosed Property through a Lender Acquisition or any other Successor Owner (other than such Lender) will be obligated to cause the Commencement of Residential Construction in accordance with this Agreement, except that the Required Construction Commencement Date shall be reset as if the Closing Date occurred as of the date of the Lender Acquisition.

(d) **Obligation to Sell If Not Commence Residential Construction**. In the event that Lender acquires the Foreclosed Property through a Lender Acquisition and Lender chooses not to cause the Commencement of Residential Construction to occur prior to the Required Commencement Construction Date, it will notify Port in writing of its election within one hundred twenty (120) days following the Lender Acquisition or promptly after Lender makes such election, and will thereafter use good faith efforts to sell its interest with reasonable diligence to a purchaser that will be obligated to cause the Commencement of Residential Construction to occur in accordance with this Agreement (subject to adjustment of the Required Construction Commencement Date as set forth in ***Section 1.4(c)*** above), but in any event Lender will use good faith efforts to cause such sale to occur within nine (9) months following Lender's written notice to Port of its election (the "**Sale Period**").

(e) **Lender Agreement to Commence Residential Construction**. If Lender fails to sell its interest in the Property within the Sale Period, such failure will not constitute a default hereunder but Lender will be obligated to cause the Commencement of Residential Construction to the extent this Agreement obligates Vertical Developer to do so (subject to adjustment of the Required Construction Commencement Date as set forth in ***Section 1.4(c)*** above). In the event Lender agrees, or is deemed to have agreed, to cause the Commencement of Residential Construction, (i) all such work will be performed in accordance with all the requirements set forth in this Agreement, (ii) Lender shall engage a qualified construction manager with at least ten (10) years' experience managing construction projects of a similar nature, and (iii) Lender shall confirm to Port in writing that its construction manager satisfies the foregoing requirement.

1.5. ***Provisions of Any Mortgage***. Each Mortgage must provide that Lender will during the term of this Agreement, (i) promptly provide Port by registered or certified mail a copy of any notice delivered by Lender to Vertical Developer of a borrower event of default (*i.e.*, following the expiration of all notice and cure periods) under the Mortgage, and (ii) give Port prior notice before Lender initiates any Mortgage foreclosure action with respect to the Property or the Project.

1.6. ***No Impairment of Mortgage***. No default by Vertical Developer under this Agreement will invalidate or defeat the lien of any Lender. Neither a breach of any obligation in a Mortgage, nor a foreclosure under any Mortgage will defeat, diminish, render invalid or unenforceable or otherwise impair Vertical Developer's rights or obligations under this Agreement or constitute, by itself, a default under this Agreement.

1.7. *Multiple Mortgages.*

(a) If at any time there is more than one Mortgage constituting a lien on a single portion of the Property or any interest therein, the lien of Lender prior in time to all others (the "**Senior Lender**") will be vested with the rights under ***Sections 1.3*** (Lender's Option to Cure Defaults), ***1.13*** (Consent of Lender), and ***1.4*** (Cooperation) ***of this Schedule 16*** to the exclusion of the holder of any other Mortgage except if the Senior Lender fails to exercise the rights set forth in ***Section 1.3*** (Lender's Option to Cure Defaults), then the holder of a junior Mortgage that has provided notice to Port in accordance with ***Section 1.2*** (Copy of Notice of Default to Lender) will succeed to the rights set forth in ***Section 1.3*** (Lender's Option to Cure Defaults), only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in ***Section 1.3*** (Lender's Option to Cure Defaults).

(b) A Senior Lender's failure to exercise its rights under ***Section 1.3*** (Lender's Option to Cure Defaults), ***Section 1.13*** (Consent of Lender) or ***Section 1.14*** (Cooperation) ***of this Schedule 16*** as applicable, or any delay in the response of any Lender to any notice by Port will not extend (i) any cure period or (ii) Vertical Developer's or any Lender's rights under this ***Schedule 16***. For purposes of this ***Section 1.7***, in the absence of an order of a court of competent jurisdiction that is served on Port, a title report prepared by a reputable title company licensed to do business in the State of California and having an office in the City, setting forth the order of priorities of the liens of Mortgages on real property, may be relied upon by Port as conclusive evidence of priority.

1.8. *Cured Defaults*. Port will accept performance by a Lender with the same force and effect as it performed by Vertical Developer. No such performance on behalf of Vertical Developer in and of itself will cause Lender to become a "mortgagee in possession" or otherwise cause it to be bound by or liable under this Agreement.

1.9. *Limitation on Liability of Lender*. Notwithstanding anything herein to the contrary, no Lender will become liable under the provisions of this Agreement unless and until such time as it becomes the owner of some or any portion of the Property and then only for so long as it remains the owner of such fee interest and only with respect to the obligations arising during such period of ownership.

If a Lender becomes the owner of the Property, (i) except as set forth in ***Sections 1.4(c)*** (Obligation to Commence Residential Construction) and ***1.4(d)*** (Obligation to Sell if Not Commence Residential Construction) ***of this Schedule 16***, such Lender will be liable to Port for the obligations of Vertical Developer hereunder only to the extent such obligations arise during the period that such Lender remains the owner of the Property, and (ii) in no event will Lender have personal liability under this Agreement, as applicable, greater than Lender's interest in the Property, and Port will have no recourse against Lender's assets other than its interest herein or therein.

1.10. *Intentionally Omitted.*

1.11. *Nominee*. Any rights of a Lender under this ***Schedule 16*** (Financing Provisions), may be exercised by or through its nominee or designee (other than Vertical Developer) which is an Affiliate of Lender; provided, however, no Lender will acquire title to the Property through a nominee or designee which is not a Person otherwise permitted to become Vertical Developer

hereunder; provided, further that a Lender may acquire title to the Property through a wholly owned (directly or indirectly) subsidiary of Lender.

1.12. ***Intentionally Omitted.***

1.13. ***Consent of Lender***. Port will not (i) modify this Agreement in a manner that amends any provision of this ***Schedule 16*** or otherwise amends the terms of this Agreement in a manner that creates a material adverse effect upon Senior Lender, or (ii) terminate or cancel this Agreement without Senior Lender's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any such modification, termination or cancellation of this Agreement without Senior Lender's consent will be effective against Senior Lender.

1.14. ***Cooperation***. Port, through its Executive Director, and Vertical Developer will cooperate in including in this Agreement by suitable written amendment or agreement from time to time any provision which may be reasonably requested by the Senior Lender and customarily included in such amendment or agreement to implement the provisions and intent of this ***Schedule 16*** provided, however, that any such amendment or agreement will not adversely affect in any material respect any of Port's rights and remedies under this Agreement.

1.15. ***Reliance***.

The provisions of this ***Schedule 16*** are for the benefit of the Lender and may be relied upon and shall be enforceable by the Lender.

1.16. ***Priority of Lender Protections***.

In the event of a conflict between a provision in this ***Schedule 16***, on the one hand, and any other provision of this Agreement, on the other hand, the provision set forth in this ***Schedule 16*** will control.

SCHEDULE 18.1 HAZARDOUS MATERIALS INDEMNIFICATION

[FOR FEE PARCELS ONLY]

18.1(b) Hazardous Materials Indemnification.

(i) In addition to its obligations under Section 18.1(a) and subject to Section 18.1(c), Vertical Developer, for itself and on behalf of its tenants, Agents, or any of their respective Agents (individually "**Related Third Party**" and collectively "**Related Third Parties**") or their respective Invitees, agrees to Indemnify the City Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(1) any Hazardous Material Condition existing or occurring during the Term;

(2) any Handling or Release of Hazardous Materials in, on, under, around or about the Premises during the Term;

(3) [Add if Vertical Developer responsible for Deferred Infrastructure: without limiting Vertical Developer's Indemnification obligations in this Section 18.1(b), any Handling or Release of Hazardous Materials in, on, under, around or about any area outside the Premises boundary used by Vertical Developer or its Agents to perform the Deferred Infrastructure, ("**Deferred Infrastructure Area**") at any time prior to Acceptance of such Deferred Infrastructure; or

(4) without limiting Vertical Developer's Indemnification obligations in Section 18.1(b)(2) **[if applicable:** or 18.1(b)(3)], any Handling or Release of Hazardous Materials outside of the Premises, but in, on, under, around or about the 28-Acre Site, by Tenant or any Related Third Parties during the Term; or

(5) any Exacerbation of any Hazardous Material Condition during the Term; or

(6) failure by Vertical Developer or any of its Related Third Parties to comply with the Pier 70 Risk Management Plan or failure by Vertical Developer's Invitees or the Invitees of the Related Third Parties to comply with the Pier 70 Risk Management Plan within the Premises during the Term; or

(7) claims by Vertical Developer or any Related Third Party for exposure during the Term from and after **[for non-Horizontal Developer-affiliate deals**: the Closing Date] **[for Horizontal Developer affiliates deals**: the effective date of the Master Lease] to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(ii) "**Losses**" under Section 18.1(b) includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this section, Vertical Developer must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(iii) Vertical Developer understands and agrees that its liability to the City Parties and the State Lands Indemnified Parties under this Section 18.1(b) subject to Section 18.1(c), arises upon the earlier to occur of:

(1) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises, **[Add if Vertical Developer responsible for Deferred Infrastructure**: and the Deferred Infrastructure Area;]

(2) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises **[Add if Vertical Developer responsible for Deferred Infrastructure**: the Deferred Infrastructure Area;]

(3) the Exacerbation of any Hazardous Material Condition, or

(4) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

18.1(c) Exclusions from Indemnifications, Waivers and Releases.

(i) Nothing in this Article 18.1(b) relieves the City Parties or the State Lands Indemnified Parties from liability, nor will the defense obligations set forth in Sections 18.3 extend to Losses:

(1) to the extent caused by the gross negligence or willful misconduct of the City Parties; or

(2) from third parties' claims for exposure to Hazardous Materials prior to **[for non-Horizontal Developer affiliate deals:** the Closing Date.] **[for Horizontal Developer affiliate deals:** the effective date of the Master Lease.] or

(3) without limiting Vertical Developer's Indemnification obligations under [if applicable: Sections 18.1(b)(i)(3)], 18.1(b)(i)(4), 18.1(b)(i)(6), or 18.1(b)(i)(7), and to the extent the applicable Loss was not caused by the failure of Vertical Developer or any of its Related Third Parties to comply with the Pier 70 Risk Management Plan or the failure of Vertical Developer's Invitees or the Invitees of the Related Third Parties to comply with the Pier 70 Risk Management Plan within the Property, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Deferred Infrastructure Area after the Acceptance Date for the Deferred Infrastructure Area (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Deferred Infrastructure Area and is not also present in, on or around the Premises); provided, however, the foregoing limitation on Vertical Developer's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Vertical Developer, its tenants, subtenants, Agents, or any of their respective Agents.

(ii) If it is reasonable for a City Party or a State Lands Indemnified Party to assert that a claim for Indemnification under this Section 18.1(c) is covered by a pollution liability insurance policy, pursuant to which such City Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Vertical Developer in asserting a claim or claims under such insurance policy but without waiving any of its rights under this Section 18.1(c). Notwithstanding the foregoing, if a City Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Vertical Developer, the Indemnification from Vertical Developer under this Section 18.1(c) will not be effective unless such City Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (1) Vertical Developer pays any self-insured retention amount required under the policy, and (2) nothing in this sentence requires any City Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Vertical Developer.

18.1(d) Additional Definitions.

"**Environmental Laws**" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this Lease. "**Environmental Laws**" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"**Exacerbate**" or "**Exacerbating**" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission, it being understood that the mere discovery of Hazardous Materials does not cause "**Exacerbation**". "**Exacerbate**" also includes the disturbance, removal or generation of Hazardous Materials in the course of Vertical Developer's operations, Investigations, maintenance, repair, construction of Improvements and Alterations under this Lease. "**Exacerbate**" also means failure to comply with the Pier 70 Risk Management Plan. "**Exacerbation**" has a correlative meaning.

"**Handle**" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "**Handling**" has a correlative meaning.

"**Hazardous Material Claim**" means any Environmental Regulatory Action or any claim made or threatened by any third party against the City Parties or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of

the use or any amenity of the Premises or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"**Hazardous Material Condition**" means the Release or Exacerbation, or threatened Release or Exacerbation of Hazardous Materials in, on, under, or about the Premises or the environment, or from any vehicles Vertical Developer, its tenants, subtenants, or its Agents and Invitees use in, on, under, or about the Premises.

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"**New Hazardous Material**" means a Hazardous Material that is not a Pre-Existing Hazardous Material.

"**Pier 70 Risk Management Plan**" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"**Release**" means when used with respect to Hazardous Materials, any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"**Remediate**" or "**Remediation**" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "**remedy**" or "**remedial action**" in California Health and Safety Code Section 25322 and "**remove**" or "**removal**" in California Health and Safety Code Section 25323.

"**State Lands Indemnified Parties**" means the State of California, the California State Lands Commission, all of its heirs, legal representatives, successors and assigns, and all other Persons acting on its behalf.

SCHEDULE 19.4

PORT'S SHARE OF NET TRANSFER PROCEEDS

(a) Distribution of, and Port's Participation in, Sale Proceeds of Qualifying Early Sale. One Hundred Percent (100%) of the Qualifying Early Sale Proceeds from a Qualifying Early Sale by Initial Vertical Developer occurring at any time prior to the Early Transfer Date, less the following deductions will be treated as Land Proceeds in accordance with Section 3.2 of the Financing Plan (Exhibit C-1 to the DDA):

(i) The "**Acquisition Price**" as defined in the Vertical DDA;

(ii) Port's Attorneys' Fees and Costs associated with Port's review of the Qualifying Early Sale;

(iii) Costs of Sale;

(iv) Tenant's Certified Entitlement Costs; and

(v) A 12% annual return on the Certified Entitlement Costs.

(b) Additional Definitions. Pertinent definitions used in this Schedule 19.4 are included below (undefined capitalized terms used herein are defined in the Vertical DDA):

"**Attorneys' Fees and Costs**" means reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

"**Cash Consideration**" means (i) cash, or (ii) cash equivalents.

"**Certified Entitlement Costs**" means costs set forth in an itemized statement detailing the Entitlement Cost incurred by Initial Vertical Developer to the date of the Qualifying Early Sale, certified as true, accurate and complete by an independent certified public accountant.

"**Costs of Sale**" means only the following costs incurred by Initial Vertical Developer in connection with the Qualifying Early Sale: (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, and (v) reasonable Attorneys' Fees and Costs. "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 Close of Escrow; or (2) the date that Port issues a site permit and first building permit addendum to allow commencement of construction of the Vertical Project.

"**Entitlement Costs**" means Initial Vertical Developer's reasonable out-of-pocket costs actually incurred from and after the effective date of the Vertical DDA until the Qualifying Early Sale and attributable to the following only: designing the Vertical Project; costs related to all land use approvals and entitlements, including preparation and processing of design review applications under the Pier 70 SUD and the Design for Development, subdivision maps, and costs of compliance with all conditions of approval and CEQA mitigation measures legally required by the City, Port or any other Regulatory Agency as a condition to obtaining the entitlements; and architectural, engineering, consultants, community outreach, attorney and other professional fees reasonably necessary to obtain the entitlements.
"**Initial Vertical Developer**" means **[insert name of initial Vertical Developer entity]**

"**Managing Party**" means, with respect to any Person, both (i) the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management, policies or activities of such Person (excluding customary limited partner or non-managing member approval rights) and (ii) the ownership (direct or indirect) of more than ten percent (10%) of the profits or capital of such Person.

"**Non-Cash Consideration**" means consideration received by the Initial Vertical Developer in connection with a Qualifying Early Sale that is not Cash Consideration.

"**Qualifying Early Sale**" means (i) a sale of the Initial Vertical Developer's fee interest in the Property to a Person other than a Vertical Developer Affiliate, or (ii) a Recapitalization that results in a change in the Managing Party of Vertical Developer or of the Managing Party owning ten percent (10%) or less of the profits or capital of Vertical Developer.

"**Qualifying Early Sale Proceeds**" means all Sale Proceeds received by or for the account of the Initial Vertical Developer in connection with a Qualifying Early Sale .

"**Recapitalization**" means a transfer, in a single transaction or a related series of transactions that results in a change in the Person that had more than fifty percent (50%) of the ownership interest in Initial Vertical Developer (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof, and whether direct or indirect).

"**Sale Proceeds**" means all consideration received by or for the account of Initial Vertical Developer in connection with a Qualifying Early Sale, including Cash Consideration, the principal amount of any loan made by Initial Vertical Developer to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price. "**Sale Proceeds**" do not include a commitment by an owner (whether direct or indirect) of Initial Vertical Developer to fund its share of future capital calls to construct the Vertical Project, which, in and of itself, will not be considered or deemed to be Sale Proceeds.

Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21

This Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21 (this "**Appendix**") sets forth special terms and obligations that apply specifically and exclusively to the lease of Historic Building 2, 12 or 21, as applicable, each located within the 28-Acre Site (Historic Buildings 2, 12 and 21 each a "**Historic Building**" and collectively "**Historic Buildings**"). At the time of execution of the VDDA, the approved form of VDDA for Historic Buildings 2, 12 and 21 will be revised to reflect the specific terms set forth in this Appendix, but except as expressly modified herein, the terms set forth in the approved form of VDDA will apply. For the purposes of this Appendix, any capitalized term not defined herein will have the meaning ascribed to them in the VDDA.

[NTD: The replacement in Section A below will only apply to Buildings 12 and 21: NOT Building 2, which is an Option Parcel]

A. ***Restrictive Covenants (Section 3.2).*** Section 3.2(f) of the Agreement will be replaced with the following:

> "(f) the obligation to develop the Vertical Project that complies with the Scope of Development attached hereto as Exhibit B (the "**Scope of Development**") and the Schedule of Performance attached hereto as ***Exhibit C-3***."

B. ***Port's Conditions Precedent (Section [6.4(a)])*** of the Agreement will be supplemented to add the following additional conditions precedent to Port's obligation to close Escrow and thereby Deliver the Historic Buildings to Vertical Developer:

[NTD: ITEMS (xv) through (xx) Apply to Buildings 12 and 21 Only; NOT Building 2, which is an Option Parcel]

(xv) Port has approved those aspects of the Construction Documents that are required under ***Section 12.15 (Port Review of Schematic Drawings and Construction Documents)*** to be approved prior to Close of Escrow.

(xvi) Port has received and approved evidence of adequate financing for the Vertical Project, including evidence of Vertical Developer's ability to meet any debt service obligation(s) attendant thereto, as provided for below:

(1) Vertical Developer has submitted the then-current development budget for the Vertical Project (the "**Development Budget**"), showing Vertical Developer's anticipated costs of construction.

(2) Vertical Developer has submitted, and Port has reasonably approved, (i) evidence of a bona fide commitment or commitments for the financing of that portion of the Development Budget Vertical Developer intends to borrow to finance the Vertical Project, certified by Vertical Developer to be a true and correct copy or copies thereof, with (x) no conditions to funding other than standard and customary conditions and (y) no provisions requiring acts of Vertical Developer prohibited in this Agreement, or prohibiting acts of Vertical Developer required in this Agreement, and (ii) such documentation showing sources and uses of funds as may be required by such leasehold lender.

(3) Vertical Developer has submitted a statement and appropriate supporting documents certified by Vertical Developer to be true and correct and in form reasonably satisfactory to Port showing sources and expected uses of funds sufficient to demonstrate that Vertical Developer has or will have funds equal to or exceeding the total development cost of the Vertical Project (as shown on the Development Budget) as of the Closing Date, and such funds have been spent for uses described in the Development Budget or are committed and available for that purpose.

(4) Within thirty (30) days after Vertical Developer's submission of all of the applicable documents described in this ***Section 6.4(a)(xvi)***, Port will notify Vertical Developer in writing of Port's approval or disapproval (including the reasons for disapproval) of the evidence of financing.

(xvii) If Vertical Developer elects to finance any part of the Vertical Project through funding from a leasehold lender, then such financing has closed or will close simultaneously with the Closing Date.

(xviii) Port has reasonably approved evidence of a guaranteed maximum price contract for construction of the Vertical Project ("**Construction Contract**"). Port's approval of the Construction Contract shall solely be for purposes of determining consistency with the Development Budget and the Scope of Development attached hereto as ***Exhibit B*** and consistency with the terms of this Agreement and the Parcel Lease. Port's approval of the Construction Contract is in addition to, and not as a limitation of, Port's approval rights of the Construction Documents pursuant to ***Article 12***.

(xix) The first construction permit for the Vertical Project (or in the case of a site permit or equivalent process, the first addendum authorizing construction of the Vertical Project) is ready to be issued but for the execution of the Parcel Lease by Port and payment by Vertical Developer of all building permit fees that are required to be paid prior to commencement of the work described in the building permit.

(xx) Vertical Developer has caused [_______________] to deposit into Escrow, at Vertical Developer's election, one of the following (A) a completion guaranty from a Person other than Vertical Developer meeting the Obligor Net Worth Amount guaranteeing completion of the Vertical Project in the form attached here to as ***Exhibit [__]*** ("**Completion Guaranty**"), (B) a payment and a performance bond issued by a surety reasonably acceptable to Port in an amount equal to 100% of the guaranteed maximum price in the Construction Contract in the form attached hereto as ***Exhibit [__]*** ("**Performance Bond**"), or (C) a letter of credit in an amount equal to 100% of the guaranteed maximum price in the Construction Contract and in a form reasonably acceptable to Port ("**Letter of Credit**").

(xxi) Vertical Developer will have submitted to Port evidence that the Historic Preservation Certification Application, Part 1 and Part 2 for the Vertical Project has been submitted to the National Park Service ("**NPS**"), provided, however, that this requirement will not apply if a change in Law would eliminate the availability of Historic Preservation Tax Credits for the Historic Building, or if, upon request by Vertical Developer, the Port Director, in her sole discretion, waives this requirement.

C. *Vertical Developer's Conditions Precedent* ***(Section 6.5(a))*** of the Agreement will be supplemented to add the following additional conditions precedent to Vertical Developer's obligation to close Escrow and accept the Property from Port under this Agreement:

[NTD: ITEMS (v)-(ix) apply to Buildings 12 and 21 Only; NOT Building 2, which is an Option Parcel]

(v) Port has approved those aspects of the Construction Documents that are required under ***Article 12*** to be approved by Port by the Close of Escrow, provided that Vertical Developer has timely submitted all required information and documents.

(vi) Port has approved evidence of adequate financing for the Construction of the Vertical Project in accordance with ***Section 6.4(a)(xvi)***.

(vii) If Vertical Developer elects to finance any part of the Vertical Project through funding from a leasehold lender and has provided all documents requested by the leasehold lender in a timely manner, then such financing has closed or will close simultaneously with the Close of Escrow.

(viii) The first building permit for the Vertical Project (or in the case of a site permit or equivalent process, the first addendum authorizing construction of the Vertical Project) is ready be to issued but for the execution of the Parcel Lease by Port and payment by Vertical Developer of all building permit fees that are required to be paid prior to commencement of the work described in the building permit.

(ix) Vertical Developer has obtained all Regulatory Approvals required to commence Construction of the Vertical Project and the same has been Finally Granted.

D. ***Closing. Section 7.2 (Closing)*** of the Agreement is hereby replaced in its entirety to read as follows:

[NTD: Revised Section 7.2. below only applies to Buildings 12 and 21; NOT Building 2, which is an Option Parcel]

7.2. *Closing.* The Closing hereunder will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of the Title Company on the date that is no later than thirty-six (36) months after the Effective Date hereof before 3:00 p.m. San Francisco time or such earlier date and time as Vertical Developer and Port may mutually agree upon in writing (the "**Target Closing Date**"). The "**Closing Date**" is the date that the Closing or Close of Escrow occurs.

[NTD: Revised Section 7.4 (b) below only applies to Buildings 12 and 21; not Building 2, which is an Option Parcel]

E. ***Deposit of Documents by Vertical Developer (Section [7.4(b)])*** of the Agreement will be supplemented to add the following items to be deposited by Vertical Developer into escrow at or before the Closing: **[NTD: cross check against Agreement to confirm romanette numbering is correct]**

(viii) At the election of [______________] in accordance with [***Section 6.4(a)(xx)***], a Completion Guaranty, Performance Bond or Letter of Credit.

F. ***Loss (Section [8.1])*** of the Agreement shall be deleted in its entirety and replaced with the following provision:

Loss.

(i) Prior to the Closing Date, Port will give Vertical Developer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event of any damage or destruction of the Historic Building occurring prior to the Close of Escrow which Developer reasonably determines would add less than Five Hundred Thousand and No/100 Dollars ($500,000.00) to the Budget, Developer and Port will Close the Escrow if the other closing conditions are satisfied. In such event, all proceeds, if any, of property, earthquake and flood insurance payable to Port by reason of such damage or destruction related solely to the Historic Building, whether under insurance policies held by Port or by Developer, shall be paid or Port's rights to such proceeds assigned, as applicable, to Developer.

(ii) If any damage or destruction of the Historic Building occurring prior to the Close of Escrow which Vertical Developer reasonably determines would add more than Five Hundred Thousand and No/100 Dollars ($500,000.00) to the Budget [and Port elects not to, within a reasonable time, but in no event later than 120 days after Port's notice to Vertical Developer of the occurrence, provide Vertical Developer with additional funds exceeding $500,000 through cash payment of Port funds [**for Building 2 only, if Hybrid Lease:** (or, if agreed to by Developer in its sole discretion, through Port payment of insurance payments or rent credits to be applied 50% against Minimum Rent otherwise owed under the Lease)]. Developer may elect upon 10 days' notice to Port (i) to terminate this Agreement by written notice to Port, or (ii) to Close Escrow. If Developer elects to Close Escrow, then to the extent that Port elects, in its sole discretion, to make a claim against any insurance carried by Port covering the loss, all proceeds of property, earthquake and flood insurance payable to Port by reason of such damage or destruction related solely to the Historic Building, whether under insurance policies held by Port or by Developer, shall be paid or Port's rights to such proceeds assigned, as applicable, to Developer, and, if such event of damage or destruction occurs by any reason other than the negligent or willful acts or omissions of Developer, its Agents or Invitees, Port shall pay or credit to Developer against Rent otherwise due and payable under the Lease, the amount of the insurance deductible. Vertical Developer may terminate this Agreement in the event that all or any portion of the Property is condemned.

G. **Development of Vertical Project and Related Infrastructure (Section [12])** of the Agreement shall be deleted in its entirety and replaced with the following provision:

12. DEVELOPMENT OF VERTICAL PROJECT AND RELATED INFRASTRUCTURE.

12.1. ***Developer's Construction Obligations; Project Requirements.***

(a) Project Requirements. Developer must Construct all of the Improvements in compliance with: (i) the Scope of Development, the Construction Documents, and the Schedule of Performance attached hereto as ***Exhibit C-3***; (ii) all applicable Laws, including Port Building Code, required Regulatory Approvals, the Waterfront Plan, the Pier 70 SUD and Design for Development, Environmental Laws, State Historical Building code, disabled access Laws and Laws regulating construction on the Property; (iii) the Secretary's Standards attached hereto as ***Schedule 12.1-1*** for all proposed work affecting any of the structures and buildings within the Property (regardless of whether Developer seeks Historic Preservation Tax Credits), (iv) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen

sinks in any café, restaurant or other food establishment on the Property, (v) the Mitigation Monitoring and Reporting Program; (vi) Workforce Development Plan, (vii) the HREs, and (ix) this Agreement (sometimes referred to collectively as the "**Project Requirements**"). Notwithstanding any other provision of this Agreement or the Lease to the contrary, Port's approval of the Schematic Drawings attached hereto as ***Schedule 12.1-2*** and the site plan in the form attached hereto as ***Exhibit A-2*** is in no manner intended to, and shall not, evidence or be deemed to evidence Port's approval of the Construction Documents. Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

(b) Scope of Development. Developer will Construct or cause to be Constructed the Improvements in accordance with the Project Requirements in the manner set forth in this ***Section 12***, the Scope of Development, and the Schematic Drawings.

12.2. ***Mitigation Monitoring and Reporting Program***. In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the Vertical Project will be in accordance with all applicable Environmental Laws and the Mitigation Monitoring and Reporting Program attached hereto as Exhibit K. Vertical Developer will incorporate the Mitigation Monitoring and Reporting Program into any contract or subcontract.

12.3. ***Amendment of Development Requirements***. Vertical Developer will not seek any amendment to the Design for Development under Section [249.79(c)] of the SUD or to the SUD under Section 302 of the Planning Code without obtaining the prior written consent of Port (and, for any proposed amendment that may impact Horizontal Developer, the Horizontal Developer), which consent may be given or withheld in each of their sole discretion. In its application to Port or the City for a Regulatory Approval under the SUD or applicable building codes, Vertical Developer will expressly identify in writing any elements of its proposed construction that requires an amendment to the Vertical Development Requirements, and state the reason for the proposed amendment. No amendment to the Vertical Development Requirements will be effective with respect to such items if an amendment was not clearly sought by Vertical Developer in writing and such amendment was not approved by the Port in its proprietary capacity.

[Note: Include the following *Section 12.4* (and all subsequent references to "Deferred Infrastructure") only if obligation to construct Infrastructure or other Horizontal DDA obligation tied to the Schedule of Performance has been transferred to Vertical Developer in Schedule 12.4-1]

12.4. ***Construction of Infrastructure***. Vertical Developer will be solely responsible for developing all improvements within the Property, including, without limitation, private right of ways, pedestrian walkways, infrastructure, and landscaping and hardscaping in any open space and common areas located within the Property. **[add if applicable]:** Vertical Developer will also be required to construct the Deferred Infrastructure identified on ***Exhibit Schedule 12.4-1*** attached to this Agreement. Horizontal Developer (or its successor with respect to the obligation to construct Horizontal Improvements in accordance with the Pier 70 Infrastructure Plan (attached to the Horizontal DDA as ***Exhibit B8***) will cause to be constructed Horizontal Improvements serving the Property, including streets and utilities necessary to serve the Property adjacent to (but not within) the Property, in accordance with the terms of the Horizontal DDA and as between Vertical Developer and Horizontal Developer, in accordance with the VCA. If Vertical Developer requires access to any real property outside of the Property that is under the control of Port in connection with the construction of the Deferred Infrastructure, Vertical Developer and Horizontal Developer

will use good faith efforts to negotiate and execute a license substantially in the form of Port's standard form of license, as may be adjusted between the Parties to account for the additional risks associated with such activities, including increased insurance coverage amounts or additional insurance coverage and broader indemnity and release provisions, and any additional provisions required by Law (or mandated by the Port Commission pursuant to a policy adopted by the Port Commission in a public meeting) to be included in real property licenses.

12.5. ***Construction Standards***. All construction must performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

12.6. ***Reports and Information***. During periods of construction, Vertical Developer will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

12.7. *Costs of Vertical Project*

[For Building 2 Only]: ***Costs of Vertical Project***. Port has no responsibility for any costs of the Vertical Project and Vertical Developer will pay (or cause to be paid) all costs for the Vertical Project, subject to Port's obligations under the DDA.

[For Buildings 12 and 21 Only]: ***Costs of Vertical Project for Historic Buildings 12 and 21.***

(a) Definitions.

"**Hard Costs**" means reasonable out-of-pocket costs of Rehabilitation (including costs of signage and tenant improvements constructed by Vertical Developer and not otherwise included in Soft Costs or reimbursed by any subtenant or user of the premises under the Parcel Lease) actually incurred by Vertical Developer through the Historic Building Cost Trigger Date attributable solely to the cost of labor, materials and construction "**Hard Costs**" do not include any cost reimbursed by any subtenant or user of the premises under the Parcel Lease, (ii) any Hard Costs that are included as Soft Costs or are included in other costs reimbursable to Vertical Developer or Master Developer under the DDA or Financing Plan, as applicable, or (iii) any costs incurred from and after the Historic Building Cost Trigger Date..

"**Historic Building Cost**" means the (a) sum of the following amounts, calculated separately for Historic Building 12 and Historic Building 21, determined at the earlier of the Historic Building Cost Trigger Date, or if a Sale or Qualifying Refinancing will occur (as those terms are defined in the Parcel Lease) prior to such date, forty-five (45) days prior to the applicable Sale or Qualifying Refinancing: (i) all reasonable and customary Hard Costs and Soft Costs of Rehabilitation, plus (ii) Vertical Developer Return, less (b)(i) Gross Income (as defined in the Parcel Lease) from the premises under the Parcel Lease until and including the Historic Building Cost Trigger Date, minus (ii) operating expenses for the applicable Historic Building to the extent not otherwise included in Hard Costs or Soft Costs.

"**Historic Building Cost Trigger Date**" means the earlier to occur of the date that is one year after receipt of a TCO or 90% occupancy of space in the applicable Historic Building.

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

"**Permissible Financing Costs**" means debt service and other customary financing costs incurred in connection with obtaining, negotiating and closing any financing for the development and construction of the Vertical Project, including financing from an Affiliate of Vertical Developer or another lender that is not a Bona Fide Institutional Lender (as defined in the Parcel Lease) (provided the terms of any such financing are market when compared with other debt financing provided by Bona Fide Institutional Lenders), a Bona Fide Institutional Lender (including, but not limited to any mezzanine financing), or from the sale of Historic Preservation Tax Credits, and all interest costs and other customary payments made by Vertical Developer pursuant to the terms thereof, including all application fees, transaction costs, due diligence expenses, professional fees if the services of such professionals are customary in the type of financing obtained by Vertical Developer, reasonable legal fees, and title, appraisal and survey costs actually incurred in connection with such financing and paid or reimbursed by Vertical Developer.

"**Rehabilitation**" means the repair or alteration of an historic building that does not damage or destroy materials, features, or finishes considered important in defining the building's historic character.

"**Soft Costs**" means reasonable out-of-pocket costs actually incurred by the Vertical Developer that actually constructs the Initial Improvements except to the extent excluded under this Agreement or the Parcel Lease, that are directly attributable to the following only: designing the Initial Improvements (including mock-ups and signage design); negotiation of the Transaction Documents; pursuing Historic Preservation Tax Credits; architectural, engineering, consultant, attorney, and other professional fees and printing costs; regulatory fees; CEQA mitigation measures; community benefits; Impact Fees (as defined in the DDA); Permissible Financing Costs; Port Costs and Other City Costs (as defined in the Vertical DDA); builder's risk insurance and other insurance expenses directly related to construction of the Initial Improvements, including environmental insurance; performance and payment bonds; a development fee, not to exceed 4% of Historic Building Costs (excluding the Tenant Return); costs for a construction office and construction-related signage, to the extent a construction office and construction related signage separate from Master Developer is required; Impositions to the extent attributable to the Leasehold Estate; premiums for the title insurance; safety and security measures; costs of purchasing and installing telecommunications and data infrastructure for the premises under the Parcel Lease; utilities during construction; leasing and marketing expenses (including standard brokerage commissions; provided, however, that in the case of brokerage commissions paid to Affiliate brokers, such commissions must be commercially reasonable); third party costs to prepare the Certified Historic Building Costs; tenant improvement allowances; and any other reasonable and customary costs necessary to the Rehabilitation and tenanting of the Initial Improvements through the Historic Building Cost Trigger Date, as reasonably approved by Port. "**Soft Costs**" do not include (i) distributions, dividends, preferred return or other capital return to the members or shareholders of Tenant, Tenant, or any of their respective Affiliates, (ii) any cost reimbursed by any subtenant or user of the premises under the Parcel Lease, (iii) any Soft Costs that are included as Hard Costs or are included in other costs reimbursable to Vertical Developer or Master Developer under the DDA or Financing Plan, as applicable, or (iv) any Soft Costs incurred from and after the Historic Building Cost Trigger Date.

"**TCO**" is an acronym for a Temporary Certificate of Occupancy.

"**Tenant Return**" means an amount equal to 10% of the Hard Costs and Soft Costs actually incurred by Vertical Developer for the Rehabilitation.

(b) Port Reimbursement Obligation. When determined in accordance with Section (c) below, Port will pay Vertical Developer an amount equal to the Historic Building Feasibility Gap from the next available Public Financing Sources, including any available Port Tax Increment (as those terms are defined under the Financing Plan). To allow the calculation of the Historic

Building Feasibility Gap, Vertical Developer will comply with the recordkeeping and reporting requirements of this **Section 12.7.**

(c) Reporting Requirements. Within the earlier of one hundred twenty (120) days following the date that is one year after the Historic Building Cost Trigger Date, and (ii) forty-five (45) days prior to a Sale or Qualifying Refinancing under the Parcel Lease, the Vertical Developer that constructed the Initial Improvements will furnish Port with:

the Certified Historic Building Cost Statement provided in accordance with the procedures attached to the Parcel Lease as ***Attachment 1 to Exhibit D.***

12.8. ***Port Rights of Access.*** Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Property to the extent necessary to carry out the purposes of this Agreement, including to observe the progress of Construction of the Vertical Project, to inspect the work being performed in such Construction, and to monitor Vertical Developer's compliance with the Project Requirements; provided however, Port will use commercially reasonable efforts not to adversely impact Vertical Developer's work on the Property in connection with Port's access to the Property. Port will not be estopped from taking any action (including later claiming that the construction of the Vertical Project improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

12.9. ***Regulatory Approvals.***

(a) Port Acting as Owner of Property. Vertical Developer understands and agrees that Port is entering into this Agreement in its proprietary capacity as the holder of fee title to the Property and not as a Regulatory Agency with certain police powers. Vertical Developer agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Vertical Project can be obtained.. Vertical Developer agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Vertical Project will be issued by the appropriate Regulatory Agency, and Vertical Developer understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Vertical Developer will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Vertical Project and/or the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Vertical Developer, at Vertical Developer's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Vertical Project.. By entering into this Agreement, Port is in no way modifying or limiting Vertical Developer's obligations to cause the Property to be developed, restored, used and occupied in accordance with all Laws. Vertical Developer further agrees and acknowledges that any time limitations on Port review or approval within this Agreement applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Vertical Developer understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Vertical Project or other matters related to this Agreement, and any such advocacy, promotion or lobbying will be done by Vertical Developer at Vertical Developer's sole cost and expense. Vertical Developer hereby waives any Claims against the City Parties, and fully releases and discharges the City Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Vertical Project; provided, however, that nothing herein is intended to affect or otherwise alter the rights, remedies and obligations of the Parties or any City Parties arising under the Development Agreement.

(b) **Regulatory Approval; Conditions**.

(i) Vertical Developer understands that construction of the Vertical Project [and Deferred Infrastructure,] and Vertical Developer's contemplated uses and activities on the Property, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, SFPW, SFDPH, BAAQMD, Cal OSHA and other Regulatory Agencies. Vertical Developer is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

(ii) Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Agreement, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if (1) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could encumber, restrict or adversely change the use of any Port property other than the Property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions; or (2) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions or restrictions under such permit that could restrict or change the use of the Property in a manner not otherwise permitted under this Agreement or the Parcel Lease or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions including the assumption of any unreimbursed costs or fees Port may be subject to as a result of such Regulatory Approval.

(iii) Vertical Developer will not seek any Regulatory Approval without first obtaining the approval of Port, which (except as set forth herein) will not be unreasonably withheld, conditioned or delayed. Throughout the Term, Vertical Developer will submit all applications and other forms of request for required Regulatory Approvals on a timely basis and will consult and coordinate with Port in Vertical Developer's efforts to obtain Regulatory Approvals. Port will provide Vertical Developer with its approval or disapproval thereof in writing to Vertical Developer within ten (10) business days after receipt of Vertical Developer's written request, or if Port's Executive Director reasonably determines that Port Commission or Board action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Vertical Developer's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Vertical Developer for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

(iv) Vertical Developer will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-site or require off-site improvements, removal, or other measures. Vertical Developer in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval; provided however, post-closing, Vertical Developer's right will be limited by Section 5.2 (CFD Matters) of the Parcel Lease. Vertical Developer will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Vertical Developer will pay or discharge

any fines, penalties or corrective actions imposed as a result of the failure of Vertical Developer to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Vertical Developer's obligation to pay all the costs of complying with any conditions or restrictions. Vertical Developer will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Property.

(v) Without limiting any other Indemnification provisions of the Parcel Lease, Vertical Developer will Indemnify the City Parties from and against any and all Losses which may arise in connection with Vertical Developer's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to develop and construct the Property in accordance with the Scope of Development, except to the extent that such Losses arise from the gross negligence or willful misconduct of any City Party.

(c) **Certain City Regulatory Approvals**. Horizontal Developer and the City have entered into the Development Agreement, which will govern certain land use matters under the Planning Code, including Impact Fees and Exactions. The Port and other City Agencies, with Horizontal Developer's consent, have entered into the ICA specifying certain procedures and standards that will apply when Horizontal Developer seeks Regulatory Approvals for the Horizontal Improvements from other City Agencies. A copy of the Development Agreement has either been made available to Vertical Developer for its review at Port's offices or has been provided to Vertical Developer.

(d) **Compliance**. Vertical Developer is solely responsible for ensuring that the design and construction of the Vertical Project and the Deferred Infrastructure (if assigned to and assumed by Vertical Developer in the VCA) comply with all Vertical Development Requirements and applicable Laws at no cost to the Port.

(e) **Noncompliance**. Vertical Developer must pay any fines and penalties and perform any corrective actions imposed for noncompliance with any applicable Laws and Indemnify the Port against any liability arising from such noncompliance, even if the Port is a co-permittee. Vertical Developer will not be entitled to reimbursement from public financing sources for any fines, penalties, and costs of corrective actions related to its construction of Deferred Infrastructure.

12.10. ***Conditions to Commencement of Construction of the Vertical Project.***

(a) **Conditions Precedent**. Unless expressly waived by Port, Vertical Developer must satisfy all of the following conditions before Commencement of Construction of the Vertical Project:

(i) *Certification.* Vertical Developer will have delivered to Port a statement certified by its officer as true, correct and complete that (1) it has obtained all Regulatory Approvals required to commence construction of the Vertical Project, (2) it has obtained sufficient financing to commence and complete the Vertical Project, (3) it has paid the City all Impact Fees and Exactions that are required to be paid prior to commencement of construction of the Vertical Project, [**add for Building 2 only:** and (4) it has paid the Master Marketing Fee in accordance with Section 12.16.

(ii) *Insurance*. Vertical Developer has in place all insurance required during construction of the Vertical Project under the terms of the Parcel Lease and has provided Port evidence thereof.

(iii) *Good Standing*. There will be no uncured Vertical Developer Default by Vertical Developer under this Agreement or uncured Event of Default under the Parcel Lease

(iv) *Security*. Vertical Developer will have provided security to Port with respect to the Vertical Improvements as provided in ***Section 6.4(a)(xx)***.

(b) **Conditions for Benefit of the Port**. The conditions in ***Section [12.10(a)]*** (Conditions Precedent) are solely for the benefit of Port. Only Port may waive any of those conditions, and only to the extent waivable under law.

(c) **Effect of Failure of Condition**. Developer's failure to satisfy any condition described in ***Section [12.9(a)]*** (Conditions Precedent) will not alone relieve either Party of any obligations that previously arose under this Agreement.

12.11. ***Commencement Estoppel***. Vertical Developer has the right, but not the obligation, to request an estoppel certificate from Port, at no cost to Port, for the benefit of Vertical Developer and any Mortgagee or any other lender of the Vertical Project, stating that Vertical Developer has satisfied the conditions set forth in Section 12.10. Any such request will include a certification by Vertical Developer that (i) it has satisfied the requirements of Section 12.10(a)(i) and (ii) that to its actual knowledge, Port is not in default under this Agreement or the Parcel Lease. Port will have at least ten (10) business days to respond to such request.

12.12. ***Safety Matters***. Vertical Developer will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining or nearby property, or the risk of injury to members of the public, caused by or resulting from the performance of its development of the Vertical Project. Vertical Developer will erect appropriate construction barricades to enclose the areas of such construction and maintain them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

12.13. ***Post-Closing Boundary Adjustments***. The Parties acknowledge that, as development of the 28-Acre Site advances, the description of each parcel of real property may require further refinements, which may require minor boundary adjustments. The Parties agree to cooperate in effecting any required boundary adjustments consistent with ***Section 21.2*** (Technical Changes). Vertical Developer agrees that all conveyance agreements from Vertical Developers to any transferees of the Property will include the obligation to cooperate with Port.

12.14. ***The Construction Documents.***

(a) **Construction Documents Generally**. "**Construction Documents**" will consist of Schematic Drawings, Design Development Documents and Final Construction Documents, as described below and must also comply with ***Sections 12.13(a)(iv)*** and ***12.13(a)(v)*** and the terms and conditions of this Agreement. As used in this Agreement "Construction Documents" excludes any contracts between Vertical Developer and any contractor, subcontractor, architect, engineer or consultant.

(b) "**Design Development Documents**" means drawings and plans in sufficient detail and completeness to show that the Vertical Project and the construction thereof will comply with the Project Requirements and will generally include the following:

(1) Site plan(s) at appropriate scale showing the building, streets, walks, and other open spaces. All land uses shall be designated. All site development details and bounding streets, points of vehicular and pedestrian access shall be shown.

(2) All building plans and elevations at appropriate scale.

(3) Building sections showing all typical cross sections at appropriate scale.

(4) Floor plans.

(5) Plans for public access areas showing details of features intended to be Constructed as part of the Improvements.

(6) Outline specifications for materials and finishes.

(7) Plans for interior and exterior signs required by the Port Building Code.

(8) Site and exterior and interior (for common areas only) lighting plans.

(9) Material and color samples for exterior facades, public plazas and open space, and other public areas, generally representative of the intended finished look.

(10) Roof plans showing all proposed mechanical and other equipment, vents, photo-voltaic panels, satellite dish(es), antennae(s), and mechanical or elevator penthouses.

(11) Geotechnical, structural, and other engineering assessments and investigation reports.

(12) Stormwater management plan.

(c) "**Final Construction Documents**" means plans and specifications required under applicable building codes to be submitted with an application for a building permit or addendum upon which Vertical Developer and its general contractor will rely to construct the Vertical Project.

(d) "**Schematic Drawings**" generally means: (a) a site plan at appropriate scale showing relationships of the Improvements and their respective uses, designating public access areas, open spaces, walkways, loading areas, streets, parking, and adjacent uses--adjacent existing and proposed streets, arcades and structures also should be shown; (b) conceptual plans for public access areas showing details of features intended to be constructed as part of the Vertical Project; (c) building plans, floor plans and elevations at appropriate scale and in detail sufficient to describe the Vertical Project, the general architectural character, and the location and size of uses; (d) perspective drawings sufficient to illustrate the Vertical Project; and (e) building sections showing all typical cross sections at appropriate scale and height relationships of those areas noted above.

(e) **Preparation of Construction Documents by Licensed Architect.** The Construction Documents must be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California, in consultation with a licensed historic preservation architect for purposes of complying with the Secretary's Standards as determined by the California State Historic Preservation Officer ("**SHPO**") and NPS. A California licensed architect will coordinate the work of any associated design professionals, including engineers and landscape architects.

(f) **Certification by Structural Engineer**. A California licensed structural engineer must review and certify (by wet-stamp on the Construction Documents) all final structural plans and the sufficiency of structural support elements to support the Vertical Project.

12.15. *Submission of Schematic Drawings and Construction Documents.*

Vertical Developer will prepare and submit the Construction Documents meeting the requirements of ***Section 12.13*** above to Port for review and approval or disapproval, as provided in ***Sections 12.15 and 12.16***. Each stage of document submittal is intended to constitute a further development and refinement from the previous stage. The elements of the Design Development Documents requiring Port approval will be in substantial conformance with the Schematic Drawings and the Scope of Development, and will incorporate conditions, modifications, and changes specified by the Port or required as a conditions of Regulatory Approvals. Design Development Documents will be in sufficient detail and completeness to show that the Vertical Project and the construction thereof will comply with the Project

Requirements and matters previously approved. Final Construction Documents will be a final expression of, and be based upon and substantially conform to, the approved Design Development Documents.

12.16. ***Port Review of Schematic Drawings and Construction Documents.***

(a) **<u>Scope of Review</u>**.

(i) *Generally.* Port's review and approval or disapproval of the Construction Documents under this Agreement will be reasonable and address the following: (i) conformity and compliance with the Project Requirements, (ii) exterior architectural appearance and aesthetics of the Historic Buildings, (iii) alterations to any of the Historic Buildings (iv) design and appearance of interior and exterior historic fabric and spaces that are subject to regulation under the State's Historical Building Code and the Secretary's Standards, and (v) landscape and design of all outdoor areas, including those required under Regulatory Approvals or pursuant to this Agreement to be accessible to the public. Port will review exterior signs (which may be submitted for approval with Schematic Drawings or during or post-construction) for consistency with the Design for Development, the Building Signage Plan approved by the Port pursuant to the DDA and the Secretary's Standards. Should Port identify a conflict among the Project Requirements, it will resolve such conflicts in favor of compliance with Secretary Standards, subject to compliance with all applicable laws.

(ii) *Review of Elements Subject to Secretary Standards by SHPO.* At least thirty (30) business days before submitting to SHPO, the final Historic Preservation Certification Applications, Part 2 – Description of Rehabilitation, for the Vertical Project, if any ("**SHPO Submittals**"), Vertical Developer shall provide copies of same to Port for review and comment. Port's review of the SHPO Submittals will be subject to the standards outlined in ***Section 12.15(a)(i)***. So long as the SHPO Submittals comply with the Project Requirements, Port will co-sign the SHPO Submittals if required, and if SHPO has recommended and NPS has approved or subsequently approves elements of the SHPO Submittals as being consistent with the Secretary's Standards, Port will also agree that such SHPO approved elements are consistent with the Secretary's Standards. If Vertical Developer is seeking Historic Preservation Tax Credits for the Vertical Project, then in no event will Port condition or disapprove the Schematic Drawings or any other Construction Document on the basis of elements that have been approved by the SHPO and National Park Service for purposes of certifying the Vertical Project for Historic Preservation Tax Credits.

(b) **<u>Effect of Review</u>**. Subject to ***Section 12.15(a)(ii)***, Port's review and approval or disapproval of the Construction Documents will be final and conclusive. Except by mutual reasonable agreement with Vertical Developer, Port will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously.

(c) **<u>Method of Port Action/Prior Approvals</u>**. Port will (i) approve or (ii) provide comments, propose changes, or both on each set of Construction Documents, in writing, within 30 days of receipt, so long as each set of the applicable Construction Documents meet the requirements described in ***Section 12.13*** above. Port may propose changes to the Constructions Documents that do not conflict with Project Requirements or previously approved Construction Documents. If Port proposes changes to the applicable Construction Documents, Vertical Developer and Port will promptly meet and confer in good faith to reach an agreement on any such changes proposed for a period of not more than 21 days, as may be extended by mutual agreement. Coming out of this meet and confer process, Vertical Developer will incorporate any revisions to the Construction Documents into its subsequent submittal of Construction Documents to Port. Upon receipt of the resubmittal of the Construction Documents, Port will approve, disapprove or approve conditionally the Construction Documents, in writing. Notwithstanding any other provision of this Agreement or the Parcel Lease to the contrary, Port's approval of the Construction Documents in its proprietary capacity under this Agreement

will not, evidence or be deemed to evidence Port's approval of the Final Construction Documents in its regulatory capacity. Approval of Construction Documents by Port will not be construed as approval of such documents by SHPO or NPS.

(d) Timing of Port Disapproval/Conditional Approval and Vertical Developer Resubmission. If Port disapproves aspects of the Construction Documents in whole or in part, Port in the written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions will be stated in writing and a time will be stated for satisfying the conditions. Vertical Developer will resubmit as expeditiously as possible and may continue making resubmissions until the approval of the submissions. Approval of Construction Documents by Port will not be construed as approval of such documents by SHPO or NPS

12.17. *Changes in Final Construction Documents*

(a) Approval of Changes in Required Elements. Vertical Developer will not make or cause to be made any material or substantial changes in any Port-approved Construction Documents as to the specific elements approved by Port as provided in ***Section 12.15(a)(i)*** (each a "**Required Element**") without Port's express written approval in its reasonable discretion; provided, however, if certain materials approved by the Port are not available for construction, the Vertical Developer may substitute materials which are the architectural and environmental equivalent or superior as to aesthetic appearance, qualify, color, design and texture, as approved by the Port in its reasonable discretion. Prior to making any changes that Vertical Developer considers to be non-material to any Port approved Construction Documents as to Required Elements, including substituting materials that are the architectural equivalent as to aesthetic appearance, quality, color, transparency, design and texture, Vertical Developer must first notify Port in writing of such changes in Required Elements. If Port determines that such noticed changes are material or substantial, Port will respond to Vertical Developer within 15 days of receipt of such request.

(b) Response. Vertical Developer will request Port's approval for all material or substantial changes in Required Elements in writing. Any such changes proposed for any Construction Document after the approved Schematic Drawings will expressly include the request for approval, which the Port will consider with the applicable submittal under ***Section 12.15(c)***. In addition to the notice parties set forth ***Article 30*** (Notices), Vertical Developer will deliver by electronic mail (or other format reasonably requested by Port) copies of all requests for Port's approval of material or substantial changes to Required Elements to the following parties: Port's Deputy Director of Real Estate and Development, Port's in-house historic expert, and Port's project manager for the Property. If Vertical Developer requests a material or substantial change in a Required Element outside of a Construction Document submittal, then Port will respond to Vertical Developer as promptly as reasonably possible, but in no event later than twenty (20) days after receipt of Vertical Developer's request. If Port fails to respond to such request on or after fifteen (15) days after Vertical Developer's written request, Vertical Developer will submit a second written notice to Port (including the Port parties set forth in this ***Section 12.16(b)***) requesting Port's approval or disapproval within five (5) business days after receipt by Port of Vertical Developer's second notice. The second notice shall display prominently on the envelope enclosing such request and the first page of such request (or the subject line in any notice delivered by electronic mail), substantially the following: **"APPROVAL REQUEST FOR PIER 70 VERTICAL PROJECT CONSTRUCTION REVIEW MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to respond within such five (5) business day period, such changes will be deemed approved; provided, however, Port's response by electronic mail only will be deemed a sufficient response for purposes of this ***Section 12.16(b)***. All changes to the Construction Documents must be consistent with the Secretary's Standards, and

with all other Laws as determined by Port in the exercise of its reasonable discretion. Notwithstanding the foregoing, if Vertical Developer requests a material or substantial change to approved Final Construction Documents once construction of the Vertical Project has commenced, Port will respond as promptly as reasonably possible to avoid construction delays, but in no event later than five (5) business days after Vertical Developer's request. If Port fails to respond within such three business day period, Vertical Developer may submit a second notice, consistent with the requirements set forth above in this subsection (b). If Port fails to respond within a two business day period after the second notice, Port's approval, in its proprietary capacity hereunder, the changes will be deemed approved.

(c) If Port disapproves of Vertical Developer's request and Vertical Developer disagrees with Port's disapproval, both Parties agree to use their commercially reasonable effort to reach a solution expeditiously that is mutually satisfactory to Vertical Developer and Port.

12.18. ***Conflict With Other Governmental Requirements.***

(a) **Approval by Port**. Port will not withhold its approval, where otherwise required under this Agreement, of elements of the Construction Documents or changes in Construction Documents required by any other governmental body with jurisdiction if all of the following have occurred:

(i) Port receives written notice of the required change;

(ii) Port is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction of and requiring such element or change and with Vertical Developer and its design team;

(iii) Vertical Developer cooperates fully with the governmental body having jurisdiction in seeking reasonable modifications of such requirement, or reasonable design modifications of the Vertical Project, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to Port may be achieved despite the imposition of such requirement; and

(iv) any conditions imposed in connection with such requirements are subject to ***Article [11]***.

(b) **Efforts to Attempt to Resolve Disputes**. Vertical Developer and Port recognize that the foregoing kind of conflict may arise at any stage in the preparation of the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of building permits. Accordingly, time is of the essence when such a conflict arises. Both Parties agree to use their commercially reasonable efforts to reach a solution expeditiously that is mutually satisfactory to Vertical Developer and Port.

12.19. ***Progress Meetings/Consultation***. During the preparation of Construction Documents and the Construction of the Vertical Project, Port staff and Vertical Developer agree to hold periodic progress meetings, as appropriate considering Vertical Developer's progress, to coordinate the preparation of, submission to, and review by Port of Construction Documents and the construction process. Port staff and Vertical Developer (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration. Upon reasonable prior notice to Vertical Developer, Port may, but is not obligated to, have one or more individuals present on the Property at any time and from time to time during construction, to observe the progress of Construction of the Vertical Project and to monitor Developer's compliance with this Agreement, subject to compliance with reasonable safety measures imposed by Vertical Developer.

12.20. ***Submittals after Completion.***

(a) **Record Drawings**. Vertical Developer shall furnish Port Record Drawings of the Vertical Project improvements constructed on, in, under and around the Property. Record Drawings must be in the form of full-size, hard paper copies and converted into electronic format as full-size scanned TIF files, and (2) in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "Record Drawings" means drawings, plans and surveys showing the Subsequent Construction as built on the Property and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Vertical Developer fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Subsequent Construction, and the cost of preparing such Record Drawings must reimbursed by Vertical Developer to Port as Additional Rent. Nothing in this Section shall limit Vertical Developer's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity. Vertical Developer will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Vertical Developer's request, Port will provide Vertical Developer with a release from liability for future use of the applicable materials, in a form acceptable to Vertical Developer and Port.

(b) **Record Drawing Requirements**. Record Drawings must be based on no less than 24" x 36", with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing must have a Port-assigned number placed onto the title block prior to scanning. An index of drawings shall be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings must be scanned as a test, prior to execution of this requirement in full.

12.21. ***Insurance Requirements***

(a) **Before Initial Close of Escrow**. Before the Initial Close of Escrow, Vertical Developer will procure and maintain insurance coverage set forth in the Parcel Lease for the Historic Buildings.

(b) **After Initial Close of Escrow**. From and after the Initial Close of Escrow, Vertical Developer's requirement to maintain insurance under this Agreement will be as set forth in the Parcel Lease.

(c) **Port Self-Help Right to Obtain Insurance**. After five (5) days' written notice to Vertical Developer, Port has the right, but not the obligation, to obtain, and thereafter continuously to maintain, any insurance required by this Agreement that Vertical Developer fails to obtain or maintain, and to charge the cost of obtaining and maintaining that insurance to Vertical Developer; provided, however, if Vertical Developer reimburses Port for any premiums and subsequently provides such insurance satisfactory to Port, then Port agrees to cancel the insurance it obtained and to credit Vertical Developer with any premium refund less any other costs incurred by Port resulting from Vertical Developer's failure to obtain or maintain the required insurance.

(d) **Indemnity**. The Indemnification requirements under this Agreement, the Parcel Lease, or any other agreement between Port and Vertical Developer, will in no way be limited by any insurance requirements under any such agreements.

12.22. ***Building Permit.*** Vertical Developer will submit to Port a complete application for a building permit (or site permit or equivalent) and will make deferred submittals in accordance with the Port Building Code for the remainder of the Vertical Project in a diligent and expeditious

manner. Upon any such submission, Vertical Developer will prosecute the application diligently to issuance.

12.23. ***Information Required by the County Assessor.*** The County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable transfers of property. Exhibit L lists the information that the County Assessor expects to need in order to perform the foregoing tasks (the "**Assessor Information**"). Each Party will provide to the County Assessor any Assessor Information requested in writing by the County Assessor in the format required by the County Assessor (the "**Requested Information**") within 90 days of the applicable Party's receipt of a written request for such Requested Information. Port's sole remedy with regards to a breach of this Section 12.14 is specific performance, Port hereby waiving all other rights and remedies available at law or equity. Vertical Developer waives any right to confidentiality under applicable law to the extent necessary for the County Assessor to notify Port of Vertical Developer's failure to provide the Requested Information on a timely basis and Port to exercise its right to specific performance of Vertical Developer's obligation. Promptly following the County Assessor's request, Port may, from time to time update the information requirements set forth in Exhibit L by providing Vertical Developer no less than ten (10) business days' prior notice and a replacement copy of Exhibit L.

H. **Default by Vertical Developer (Section 15.1)** of the Agreement will be supplemented to add the following event or circumstance that will constitute a Vertical Developer Default:

(k) After the Initial Close of Escrow, Vertical Developer fails to diligently proceed to commence within the times required under the Schedule of Performance, or after commencement fails to prosecute diligently to Completion (except for Deferred Items, if any), the Construction of the Vertical Project improvements in accordance with the Scope of Development, approved Construction Documents, and this Agreement, or commences construction of the Vertical Project but then abandons or ceases its work without the Approval of Port for more than one hundred and twenty (120) consecutive days or a total of one hundred and eighty (180) days (not counting any period of Force Majeure), and such failure, abandonment, or cessation continues for a period of forty-five (45) days following such Vertical Developer's receipt of notice thereof from Port;

I. **Article 22 (Definitions)** is revised to include the following new definitions:

"**Assessor Information**" is defined in ***Section 12.23***.

"**Completion Guaranty**" is defined in ***Section 6.4(a)(xix)***.

"**Construction Contract**" is defined in ***Section 6.4(a)(xvii)***.

"**Construction Documents**" is defined in ***Section 12.13(a)***.

"**Design Development Documents**" is defined in ***Section 12.13(b)***.

"**Development Budget**" is defined in ***Section 6.4(a)(xv)(1)***.

"**Final Construction Documents**" is defined in ***Section 12.13(c)***.

"**Finally Granted**" means that the action is final, binding and non-appealable and all applicable statutes of limitation relating to such action, including with respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to such action.

"**Hard Costs**" are defined in ***Section 12.7(a)***.

"**Historic Building Cost**" is defined in ***Section 12.7(a).***

"**Historic Building Cost Trigger Date**" is defined in ***Section 12.7(a).***

"**Historic Building Feasibility Gap**" is defined in ***Section 12.7(a).***

"**History Building Schedule**" is defined in ***Section 12.7(a).***

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

"**Letter of Credit**" is defined in ***Section 6.4(a)(xix).***

"**Net Worth**" means the equity of an entity's owners (e.g., equity interest of shareholders of a corporation or members of a limited liability company) calculated in accordance with generally accepted accounting principles consistently applies or the income tax basis of accounting consistently applied.

"**NPS**" is defined in ***Section 6.4(a)(xx).***

"**Obligor Net Worth Amount**" means Ten Million Dollars ($10,000,000.00) which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Effective Date and every ten (10) years thereafter.

"**Performance Bond**" is defined in ***Section 6.4(a)(xix).***

"**Permissible Financing Costs**" is defined in ***Section 12.7(a).***

"**Requested Information**" is defined in ***Section 12.23.***

"**Required Element**" is defined in ***Section 12.16(a).***

"**Schematic Drawings**" is defined in ***Section 12.13(d).***

"**SHPO Submittals**" is defined in ***Section 12.15(a)(ii).***

"**Soft Costs**" is defined in ***Section 12.7(a).***

"**Tenant Return**" is defined in ***Section 12.7(a).***

J. <u>Historic Preservation Tax Credits (Article 23)</u> is hereby added to the Agreement to read as follows:

23. HISTORIC PRESERVATION TAX CREDITS

23.1. ***Qualifying for Tax Credits.*** Vertical Developer will use its best efforts during the Term of this Agreement to obtain Historic Preservation Tax Credits available for the Vertical Project in a timely manner. After NPS has reviewed the Part 1 Applications and made a determination that the Vertical Project is eligible for Historic Preservation Tax Credits, Vertical Developer will timely submit to NPS, a final Historic Preservation Certification Applications, Part 2 – Description of Rehabilitation for Historic Preservation Project.

23.2. ***Use of Tax Credits.*** Vertical Developer is expected to sell Historic Preservation Tax Credits to one or more tax credit investors and, in connection therewith, shall submit to Port an executed master sublease for the Historic Buildings to a new partnership or limited liability company to be formed with one or more third parties (collectively, "Tax Credit Investors") and controlled by Vertical Developer or its Affiliate, together with an executed operating agreement or limited partnership agreement and all related authority and governing documents or such other

evidence that is reasonably satisfactory to Port, indicating that Vertical Developer has entered into, or has a binding commitment to enter into, an agreement with the Tax Credit Investors to utilize the Historic Preservation Tax Credits in such partnership or limited liability company (each, a "master subtenant"). So long as the terms and conditions of the Parcel Lease are not changed in any way, Port hereby consents to any master sublease with such master subtenant.

Exhibit [ ]

Form of Performance Bond

Exhibit [ ]
Scope of Development

Exhibit [ ]

Schedule of Performance for Buildings 12 and 21

Outside Date for Close of Escrow:	No later than three (3) years after the Effective Date hereof.*
Outside Date for Commencement of Construction:	No later than three (3) years after the Effective Date hereof.**
Completion of Construction:	From and after Commencement of Construction Vertical Developer must diligently prosecute construction of the Improvements to completion.***

*Subject to the provisions regarding time for performance and the procedures for Excusable Delay as set forth in Article 4 of the DDA (Performance Dates) including Down Market Delay (as defined in the DDA).

**Subject to the provisions regarding time for performance and the procedures for Excusable Delay as set forth in Article 4 of the DDA (Performance Dates) but expressly excluding Down Market Delay.

***Subject to allowable periods where construction may cease due to events of Excusable Delay, subject to the provisions regarding time for performance and the procedures set forth in Article 4 of the DDA (Performance Dates) but expressly excluding Down Market Delay.

Exhibit [ ]

Schematic Drawings

Exhibit [.]

Secretary of the Interior's Standards
for the Treatment of Historic Properties

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21

This Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21 (this "**Appendix**") sets forth special terms and obligations that apply specifically and exclusively to the lease of Historic Building 2, 12 or 21, as applicable, each located within the 28-Acre Site (Historic Buildings 2, 12 and 21 each a "**Historic Building**" and collectively "**Historic Buildings**"). At the time of execution of the VDDA, the approved form of VDDA for Historic Buildings 2, 12 and 21 will be revised to reflect the specific terms set forth in this Appendix, but except as expressly modified herein, the terms set forth in the approved form of VDDA will apply. For the purposes of this Appendix, any capitalized term not defined herein will have the meaning ascribed to them in the VDDA.

[NTD: The replacement in Section A below will only apply to Buildings 12 and 21: NOT Building 2, which is an Option Parcel]

A. ***Restrictive Covenants (Section 3.2).*** Section 3.2(f) of the Agreement will be replaced with the following:

"(f) the obligation to develop the Vertical Project that complies with the Scope of Development attached hereto as Exhibit B (the "**Scope of Development**") and the Schedule of Performance attached hereto as ***Exhibit C-3***."

B. ***Port's Conditions Precedent (Section [6.4(a)])*** of the Agreement will be supplemented to add the following additional conditions precedent to Port's obligation to close Escrow and thereby Deliver the Historic Buildings to Vertical Developer:

[NTD: ITEMS (xv) through (xx) Apply to Buildings 12 and 21 Only; NOT Building 2, which is an Option Parcel]

(xv) Port has approved those aspects of the Construction Documents that are required under ***Section 12.15 (Port Review of Schematic Drawings and Construction Documents)*** to be approved prior to Close of Escrow.

(xvi) Port has received and approved evidence of adequate financing for the Vertical Project , including evidence of Vertical Developer's ability to meet any debt service obligation(s) attendant thereto, as provided for below:

(1) Vertical Developer has submitted the then-current development budget for the Vertical Project (the "**Development Budget**"), showing Vertical Developer's anticipated costs of construction.

(2) Vertical Developer has submitted, and Port has reasonably approved, (i) evidence of a bona fide commitment or commitments for the financing of that portion of the Development Budget Vertical Developer intends to borrow to finance the Vertical Project , certified by Vertical Developer to be a true and correct copy or copies thereof, with (x) no conditions to funding other than standard and customary conditions and (y) no provisions requiring acts of Vertical Developer prohibited in this Agreement, or prohibiting acts of Vertical Developer required in this Agreement, and (ii) such documentation showing sources and uses of funds as may be required by such leasehold lender.

(3) Vertical Developer has submitted a statement and appropriate supporting documents certified by Vertical Developer to be true and correct and in form reasonably satisfactory to Port showing sources and expected uses of funds sufficient to demonstrate that Vertical Developer has or will have funds equal to or exceeding the total development cost of the Vertical Project (as shown on the Development Budget) as of the Closing Date, and such funds have been spent for uses described in the Development Budget or are committed and available for that purpose.

(4) Within thirty (30) days after Vertical Developer's submission of all of the applicable documents described in this ***Section 6.4(a)(xvi)***, Port will notify Vertical Developer in writing of Port's approval or disapproval (including the reasons for disapproval) of the evidence of financing.

(xvii) If Vertical Developer elects to finance any part of the Vertical Project through funding from a leasehold lender, then such financing has closed or will close simultaneously with the Closing Date.

(xviii) Port has reasonably approved evidence of a guaranteed maximum price contract for construction of the Vertical Project ("**Construction Contract**"). Port's approval of the Construction Contract shall solely be for purposes of determining consistency with the Development Budget and the Scope of Development attached hereto as ***Exhibit B*** and consistency with the terms of this Agreement and the Parcel Lease. Port's approval of the Construction Contract is in addition to, and not as a limitation of, Port's approval rights of the Construction Documents pursuant to ***Article 12***.

(xix) The first construction permit for the Vertical Project (or in the case of a site permit or equivalent process, the first addendum authorizing construction of the Vertical Project) is ready to be issued but for the execution of the Parcel Lease by Port and payment by Vertical Developer of all building permit fees that are required to be paid prior to commencement of the work described in the building permit.

(xx) Vertical Developer has caused [______________] to deposit into Escrow, at Vertical Developer's election, one of the following (A) a completion guaranty from a Person other than Vertical Developer meeting the Obligor Net Worth Amount guaranteeing completion of the Vertical Project in the form attached here to as ***Exhibit [__]*** ("**Completion Guaranty**"), (B) a payment and a performance bond issued by a surety reasonably acceptable to Port in an amount equal to 100% of the guaranteed maximum price in the Construction Contract in the form attached hereto as ***Exhibit [__]*** ("**Performance Bond**"), or (C) a letter of credit in an amount equal to 100% of the guaranteed maximum price in the Construction Contract and in a form reasonably acceptable to Port ("**Letter of Credit**").

(xxi) Vertical Developer will have submitted to Port evidence that the Historic Preservation Certification Application, Part 1 and Part 2 for the Vertical Project has been submitted to the National Park Service ("**NPS**"), provided, however, that this requirement will not apply if a change in Law would eliminate the availability of Historic Preservation Tax Credits for the Historic Building, or if, upon request by Vertical Developer, the Port Director, in her sole discretion, waives this requirement.

C. ***Vertical Developer's Conditions Precedent*** ***(Section 6.5(a))*** of the Agreement will be supplemented to add the following additional conditions precedent to Vertical Developer's obligation to close Escrow and accept the Property from Port under this Agreement:

[NTD: ITEMS (v)-(ix) apply to Buildings 12 and 21 Only; NOT Building 2, which is an Option Parcel]

(v) Port has approved those aspects of the Construction Documents that are required under ***Article 12*** to be approved by Port by the Close of Escrow, provided that Vertical Developer has timely submitted all required information and documents.

(vi) Port has approved evidence of adequate financing for the Construction of the Vertical Project in accordance with ***Section 6.4(a)(xvi)***.

(vii) If Vertical Developer elects to finance any part of the Vertical Project through funding from a leasehold lender and has provided all documents requested by the leasehold lender in a timely manner, then such financing has closed or will close simultaneously with the Close of Escrow.

(viii) The first building permit for the Vertical Project (or in the case of a site permit or equivalent process, the first addendum authorizing construction of the Vertical Project) is ready be to issued but for the execution of the Parcel Lease by Port and payment by Vertical Developer of all building permit fees that are required to be paid prior to commencement of the work described in the building permit.

(ix) Vertical Developer has obtained all Regulatory Approvals required to commence Construction of the Vertical Project and the same has been Finally Granted.

D. ***Closing***. ***Section 7.2 (Closing)*** of the Agreement is hereby replaced in its entirety to read as follows:

[NTD: Revised Section 7.2 below only applies to Buildings 12 and 21; NOT Building 2, which is an Option Parcel]

7.2. *Closing*. The Closing hereunder will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of the Title Company on the date that is no later than thirty-six (36) months after the Effective Date hereof before 3:00 p.m. San Francisco time or such earlier date and time as Vertical Developer and Port may mutually agree upon in writing (the "**Target Closing Date**"). The "**Closing Date**" is the date that the Closing or Close of Escrow occurs.

[NTD: Revised Section 7.4 (b) below only applies to Buildings 12 and 21; not Building 2, which is an Option Parcel]

E. ***Deposit of Documents by Vertical Developer*** ***(Section [7.4(b)])*** of the Agreement will be supplemented to add the following items to be deposited by Vertical Developer into escrow at or before the Closing: [NTD: cross check against Agreement to confirm romanette numbering is correct].

(viii) At the election of [_____________] in accordance with [***Section 6.4(a)(xx)***], a Completion Guaranty, Performance Bond or Letter of Credit.

F. ***Loss (Section [8.1])*** of the Agreement shall be deleted in its entirety and replaced with the following provision:

Loss.

(i) Prior to the Closing Date, Port will give Vertical Developer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event of any damage or destruction of the Historic Building occurring prior to the Close of Escrow which Developer reasonably determines would add less than Five Hundred Thousand and No/100 Dollars ($500,000.00) to the Budget, Developer and Port will Close the Escrow if the other closing conditions are satisfied. In such event, all proceeds, if any, of property, earthquake and flood insurance payable to Port by reason of such damage or destruction related solely to the Historic Building, whether under insurance policies held by Port or by Developer, shall be paid or Port's rights to such proceeds assigned, as applicable, to Developer.

(ii) If any damage or destruction of the Historic Building occurring prior to the Close of Escrow which Vertical Developer reasonably determines would add more than Five Hundred Thousand and No/100 Dollars ($500,000.00) to the Budget [and Port elects not to, within a reasonable time, but in no event later than 120 days after Port's notice to Vertical Developer of the occurrence, provide Vertical Developer with additional funds exceeding $500,000 through cash payment of Port funds [**for Building 2 only, if Hybrid Lease:** (or, if agreed to by Developer in its sole discretion, through Port payment of insurance payments or rent credits to be applied 50% against Minimum Rent otherwise owed under the Lease)]. Developer may elect upon 10 days' notice to Port (i) to terminate this Agreement by written notice to Port, or (ii) to Close Escrow. If Developer elects to Close Escrow, then to the extent that Port elects, in its sole discretion, to make a claim against any insurance carried by Port covering the loss, all proceeds of property, earthquake and flood insurance payable to Port by reason of such damage or destruction related solely to the Historic Building, whether under insurance policies held by Port or by Developer, shall be paid or Port's rights to such proceeds assigned, as applicable, to Developer, and, if such event of damage or destruction occurs by any reason other than the negligent or willful acts or omissions of Developer, its Agents or Invitees, Port shall pay or credit to Developer against Rent otherwise due and payable under the Lease, the amount of the insurance deductible. Vertical Developer may terminate this Agreement in the event that all or any portion of the Property is condemned.

G. **Development of Vertical Project and Related Infrastructure (Section [12])** of the Agreement shall be deleted in its entirety and replaced with the following provision:

12. DEVELOPMENT OF VERTICAL PROJECT AND RELATED INFRASTRUCTURE.

12.1. ***Developer's Construction Obligations; Project Requirements.***

(a) Project Requirements. Developer must Construct all of the Improvements in compliance with: (i) the Scope of Development, the Construction Documents, and the Schedule of Performance attached hereto as ***Exhibit C-3***; (ii) all applicable Laws, including Port Building Code, required Regulatory Approvals, the Waterfront Plan, the Pier 70 SUD and Design for Development, Environmental Laws, State Historical Building code, disabled access Laws and Laws regulating construction on the Property; (iii) the Secretary's Standards attached hereto as ***Schedule 12.1-1*** for all proposed work affecting any of the structures and buildings within the Property (regardless of whether Developer seeks Historic Preservation Tax Credits), (iv) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen

sinks in any café, restaurant or other food establishment on the Property, (v) the Mitigation Monitoring and Reporting Program; (vi) Workforce Development Plan, (vii) the HREs, and (ix) this Agreement (sometimes referred to collectively as the "**Project Requirements**"). Notwithstanding any other provision of this Agreement or the Lease to the contrary, Port's approval of the Schematic Drawings attached hereto as ***Schedule 12.1-2*** and the site plan in the form attached hereto as ***Exhibit A-2*** is in no manner intended to, and shall not, evidence or be deemed to evidence Port's approval of the Construction Documents. Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

(b) Scope of Development. Developer will Construct or cause to be Constructed the Improvements in accordance with the Project Requirements in the manner set forth in this ***Section 12***, the Scope of Development, and the Schematic Drawings.

12.2. ***Mitigation Monitoring and Reporting Program***. In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the Vertical Project will be in accordance with all applicable Environmental Laws and the Mitigation Monitoring and Reporting Program attached hereto as Exhibit K. Vertical Developer will incorporate the Mitigation Monitoring and Reporting Program into any contract or subcontract.

12.3. ***Amendment of Development Requirements***. Vertical Developer will not seek any amendment to the Design for Development under Section [249.79(c)] of the SUD or to the SUD under Section 302 of the Planning Code without obtaining the prior written consent of Port (and, for any proposed amendment that may impact Horizontal Developer, the Horizontal Developer), which consent may be given or withheld in each of their sole discretion. In its application to Port or the City for a Regulatory Approval under the SUD or applicable building codes, Vertical Developer will expressly identify in writing any elements of its proposed construction that requires an amendment to the Vertical Development Requirements, and state the reason for the proposed amendment. No amendment to the Vertical Development Requirements will be effective with respect to such items if an amendment was not clearly sought by Vertical Developer in writing and such amendment was not approved by the Port in its proprietary capacity.

[Note: Include the following *Section 12.4* (and all subsequent references to "Deferred Infrastructure") only if obligation to construct Infrastructure or other Horizontal DDA obligation tied to the Schedule of Performance has been transferred to Vertical Developer in Schedule 12.4-1]

12.4. ***Construction of Infrastructure***. Vertical Developer will be solely responsible for developing all improvements within the Property, including, without limitation, private right of ways, pedestrian walkways, infrastructure, and landscaping and hardscaping in any open space and common areas located within the Property. [add if applicable]: Vertical Developer will also be required to construct the Deferred Infrastructure identified on ***Exhibit Schedule 12.4-1*** attached to this Agreement. Horizontal Developer (or its successor with respect to the obligation to construct Horizontal Improvements in accordance with the Pier 70 Infrastructure Plan (attached to the Horizontal DDA as ***Exhibit B8***) will cause to be constructed Horizontal Improvements serving the Property, including streets and utilities necessary to serve the Property adjacent to (but not within) the Property, in accordance with the terms of the Horizontal DDA and as between Vertical Developer and Horizontal Developer, in accordance with the VCA. If Vertical Developer requires access to any real property outside of the Property that is under the control of Port in connection with the construction of the Deferred Infrastructure, Vertical Developer and Horizontal Developer

will use good faith efforts to negotiate and execute a license substantially in the form of Port's standard form of license, as may be adjusted between the Parties to account for the additional risks associated with such activities, including increased insurance coverage amounts or additional insurance coverage and broader indemnity and release provisions, and any additional provisions required by Law (or mandated by the Port Commission pursuant to a policy adopted by the Port Commission in a public meeting) to be included in real property licenses.

12.5. ***Construction Standards***. All construction must performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

12.6. ***Reports and Information***. During periods of construction, Vertical Developer will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

12.7. *Costs of Vertical Project*

[For Building 2 Only]: ***Costs of Vertical Project***. Port has no responsibility for any costs of the Vertical Project and Vertical Developer will pay (or cause to be paid) all costs for the Vertical Project, subject to Port's obligations under the DDA.

[For Buildings 12 and 21 Only]: ***Costs of Vertical Project for Historic Buildings 12 and 21.***

(a) Definitions.

"**Hard Costs**" means reasonable out-of-pocket costs of Rehabilitation (including costs of signage and tenant improvements constructed by Vertical Developer and not otherwise included in Soft Costs or reimbursed by any subtenant or user of the premises under the Parcel Lease) actually incurred by Vertical Developer through the Historic Building Cost Trigger Date attributable solely to the cost of labor, materials and construction "**Hard Costs**" do not include any cost reimbursed by any subtenant or user of the premises under the Parcel Lease, (ii) any Hard Costs that are included as Soft Costs or are included in other costs reimbursable to Vertical Developer or Master Developer under the DDA or Financing Plan, as applicable; or (iii) any costs incurred from and after the Historic Building Cost Trigger Date..

"**Historic Building Cost**" means the (a) sum of the following amounts, calculated separately for Historic Building 12 and Historic Building 21, determined at the earlier of the Historic Building Cost Trigger Date, or if a Sale or Qualifying Refinancing will occur (as those terms are defined in the Parcel Lease) prior to such date, forty-five (45) days prior to the applicable Sale or Qualifying Refinancing: (i) all reasonable and customary Hard Costs and Soft Costs of Rehabilitation, plus (ii) Vertical Developer Return, less (b)(i) Gross Income (as defined in the Parcel Lease) from the premises under the Parcel Lease until and including the Historic Building Cost Trigger Date, minus (ii) operating expenses for the applicable Historic Building to the extent not otherwise included in Hard Costs or Soft Costs.

"**Historic Building Cost Trigger Date**" means the earlier to occur of the date that is one year after receipt of a TCO or 90% occupancy of space in the applicable Historic Building.

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

"**Permissible Financing Costs**" means debt service and other customary financing costs incurred in connection with obtaining, negotiating and closing any financing for the development and construction of the Vertical Project, including financing from an Affiliate of Vertical Developer or another lender that is not a Bona Fide Institutional Lender (as defined in the Parcel Lease) (provided the terms of any such financing are market when compared with other debt financing provided by Bona Fide Institutional Lenders), a Bona Fide Institutional Lender (including, but not limited to any mezzanine financing), or from the sale of Historic Preservation Tax Credits, and all interest costs and other customary payments made by Vertical Developer pursuant to the terms thereof, including all application fees, transaction costs, due diligence expenses, professional fees if the services of such professionals are customary in the type of financing obtained by Vertical Developer, reasonable legal fees, and title, appraisal and survey costs actually incurred in connection with such financing and paid or reimbursed by Vertical Developer.

"**Rehabilitation**" means the repair or alteration of an historic building that does not damage or destroy materials, features, or finishes considered important in defining the building's historic character.

"**Soft Costs**" means reasonable out-of-pocket costs actually incurred by the Vertical Developer that actually constructs the Initial Improvements except to the extent excluded under this Agreement or the Parcel Lease, that are directly attributable to the following only: designing the Initial Improvements (including mock-ups and signage design); negotiation of the Transaction Documents; pursuing Historic Preservation Tax Credits; architectural, engineering, consultant, attorney, and other professional fees and printing costs; regulatory fees; CEQA mitigation measures; community benefits; Impact Fees (as defined in the DDA); Permissible Financing Costs; Port Costs and Other City Costs (as defined in the Vertical DDA); builder's risk insurance and other insurance expenses directly related to construction of the Initial Improvements, including environmental insurance; performance and payment bonds; a development fee, not to exceed 4% of Historic Building Costs (excluding the Tenant Return); costs for a construction office and construction-related signage, to the extent a construction office and construction related signage separate from Master Developer is required; Impositions to the extent attributable to the Leasehold Estate; premiums for the title insurance; safety and security measures; costs of purchasing and installing telecommunications and data infrastructure for the premises under the Parcel Lease; utilities during construction; leasing and marketing expenses (including standard brokerage commissions; provided, however, that in the case of brokerage commissions paid to Affiliate brokers, such commissions must be commercially reasonable); third party costs to prepare the Certified Historic Building Costs; tenant improvement allowances; and any other reasonable and customary costs necessary to the Rehabilitation and tenanting of the Initial Improvements through the Historic Building Cost Trigger Date, as reasonably approved by Port. "**Soft Costs**" do not include (i) distributions, dividends, preferred return or other capital return to the members or shareholders of Tenant, Tenant, or any of their respective Affiliates, (ii) any cost reimbursed by any subtenant or user of the premises under the Parcel Lease, (iii) any Soft Costs that are included as Hard Costs or are included in other costs reimbursable to Vertical Developer or Master Developer under the DDA or Financing Plan, as applicable, or (iv) any Soft Costs incurred from and after the Historic Building Cost Trigger Date.

"**TCO**" is an acronym for a Temporary Certificate of Occupancy.

"**Tenant Return**" means an amount equal to 10% of the Hard Costs and Soft Costs actually incurred by Vertical Developer for the Rehabilitation.

(b) Port Reimbursement Obligation. When determined in accordance with Section (c) below, Port will pay Vertical Developer an amount equal to the Historic Building Feasibility Gap from the next available Public Financing Sources, including any available Port Tax Increment (as those terms are defined under the Financing Plan). To allow the calculation of the Historic

Building Feasibility Gap, Vertical Developer will comply with the recordkeeping and reporting requirements of this **Section 12.7**.

(c) Reporting Requirements. Within the earlier of one hundred twenty (120) days following the date that is one year after the Historic Building Cost Trigger Date, and (ii) forty-five (45) days prior to a Sale or Qualifying Refinancing under the Parcel Lease, the Vertical Developer that constructed the Initial Improvements will furnish Port with:

the Certified Historic Building Cost Statement provided in accordance with the procedures attached to the Parcel Lease as ***Attachment 1 to Exhibit D.***

12.8. ***Port Rights of Access***. Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Property to the extent necessary to carry out the purposes of this Agreement, including to observe the progress of Construction of the Vertical Project, to inspect the work being performed in such Construction, and to monitor Vertical Developer's compliance with the Project Requirements; provided however, Port will use commercially reasonable efforts not to adversely impact Vertical Developer's work on the Property in connection with Port's access to the Property. Port will not be estopped from taking any action (including later claiming that the construction of the Vertical Project improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

12.9. ***Regulatory Approvals***.

(a) **Port Acting as Owner of Property**. Vertical Developer understands and agrees that Port is entering into this Agreement in its proprietary capacity as the holder of fee title to the Property and not as a Regulatory Agency with certain police powers. Vertical Developer agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Vertical Project can be obtained. Vertical Developer agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Vertical Project will be issued by the appropriate Regulatory Agency, and Vertical Developer understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Vertical Developer will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Vertical Project and/or the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Vertical Developer, at Vertical Developer's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Vertical Project. By entering into this Agreement, Port is in no way modifying or limiting Vertical Developer's obligations to cause the Property to be developed, restored, used and occupied in accordance with all Laws. Vertical Developer further agrees and acknowledges that any time limitations on Port review or approval within this Agreement applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Vertical Developer understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Vertical Project or other matters related to this Agreement, and any such advocacy, promotion or lobbying will be done by Vertical Developer at Vertical Developer's sole cost and expense. Vertical Developer hereby waives any Claims against the City Parties, and fully releases and discharges the City Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Vertical Project; provided, however, that nothing herein is intended to affect or otherwise alter the rights, remedies and obligations of the Parties or any City Parties arising under the Development Agreement.

(b) **Regulatory Approval; Conditions.**

(i) Vertical Developer understands that construction of the Vertical Project [and Deferred Infrastructure,] and Vertical Developer's contemplated uses and activities on the Property, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, SFPW, SFDPH, BAAQMD, Cal OSHA and other Regulatory Agencies. Vertical Developer is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

(ii) Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Agreement, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if (1) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could encumber, restrict or adversely change the use of any Port property other than the Property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions; or (2) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions or restrictions under such permit that could restrict or change the use of the Property in a manner not otherwise permitted under this Agreement or the Parcel Lease or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions including the assumption of any unreimbursed costs or fees Port may be subject to as a result of such Regulatory Approval.

(iii) Vertical Developer will not seek any Regulatory Approval without first obtaining the approval of Port, which (except as set forth herein) will not be unreasonably withheld, conditioned or delayed. Throughout the Term, Vertical Developer will submit all applications and other forms of request for required Regulatory Approvals on a timely basis and will consult and coordinate with Port in Vertical Developer's efforts to obtain Regulatory Approvals. Port will provide Vertical Developer with its approval or disapproval thereof in writing to Vertical Developer within ten (10) business days after receipt of Vertical Developer's written request, or if Port's Executive Director reasonably determines that Port Commission or Board action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Vertical Developer's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Vertical Developer for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

(iv) Vertical Developer will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-site or require off-site improvements, removal, or other measures. Vertical Developer in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval; provided however, post-closing, Vertical Developer's right will be limited by Section 5.2 (CFD Matters) of the Parcel Lease. Vertical Developer will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Vertical Developer will pay or discharge

any fines, penalties or corrective actions imposed as a result of the failure of Vertical Developer to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Vertical Developer's obligation to pay all the costs of complying with any conditions or restrictions. Vertical Developer will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Property.

(v) Without limiting any other Indemnification provisions of the Parcel Lease, Vertical Developer will Indemnify the City Parties from and against any and all Losses which may arise in connection with Vertical Developer's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to develop and construct the Property in accordance with the Scope of Development, except to the extent that such Losses arise from the gross negligence or willful misconduct of any City Party.

(c) **Certain City Regulatory Approvals**. Horizontal Developer and the City have entered into the Development Agreement, which will govern certain land use matters under the Planning Code, including Impact Fees and Exactions. The Port and other City Agencies, with Horizontal Developer's consent, have entered into the ICA specifying certain procedures and standards that will apply when Horizontal Developer seeks Regulatory Approvals for the Horizontal Improvements from other City Agencies. A copy of the Development Agreement has either been made available to Vertical Developer for its review at Port's offices or has been provided to Vertical Developer.

(d) **Compliance**. Vertical Developer is solely responsible for ensuring that the design and construction of the Vertical Project and the Deferred Infrastructure (if assigned to and assumed by Vertical Developer in the VCA) comply with all Vertical Development Requirements and applicable Laws at no cost to the Port.

(e) **Noncompliance**. Vertical Developer must pay any fines and penalties and perform any corrective actions imposed for noncompliance with any applicable Laws and Indemnify the Port against any liability arising from such noncompliance, even if the Port is a co-permittee. Vertical Developer will not be entitled to reimbursement from public financing sources for any fines, penalties, and costs of corrective actions related to its construction of Deferred Infrastructure.

12.10. ***Conditions to Commencement of Construction of the Vertical Project.***

(a) **Conditions Precedent**. Unless expressly waived by Port, Vertical Developer must satisfy all of the following conditions before Commencement of Construction of the Vertical Project:

(i) *Certification.* Vertical Developer will have delivered to Port a statement certified by its officer as true, correct and complete that (1) it has obtained all Regulatory Approvals required to commence construction of the Vertical Project, (2) it has obtained sufficient financing to commence and complete the Vertical Project, (3) it has paid the City all Impact Fees and Exactions that are required to be paid prior to commencement of construction of the Vertical Project, [**add for Building 2 only:** and (4) it has paid the Master Marketing Fee in accordance with Section 12.16.

(ii) *Insurance*. Vertical Developer has in place all insurance required during construction of the Vertical Project under the terms of the Parcel Lease and has provided Port evidence thereof.

(iii) *Good Standing*. There will be no uncured Vertical Developer Default by Vertical Developer under this Agreement or uncured Event of Default under the Parcel Lease

(iv) *Security*. Vertical Developer will have provided security to Port with respect to the Vertical Improvements as provided in ***Section 6.4(a)(xx)***.

(b) **Conditions for Benefit of the Port**. The conditions in ***Section [12.10(a)]*** (Conditions Precedent) are solely for the benefit of Port. Only Port may waive any of those conditions, and only to the extent waivable under law.

(c) **Effect of Failure of Condition**. Developer's failure to satisfy any condition described in ***Section [12.9(a)]*** (Conditions Precedent) will not alone relieve either Party of any obligations that previously arose under this Agreement.

12.11. ***Commencement Estoppel.*** Vertical Developer has the right, but not the obligation, to request an estoppel certificate from Port, at no cost to Port, for the benefit of Vertical Developer and any Mortgagee or any other lender of the Vertical Project, stating that Vertical Developer has satisfied the conditions set forth in Section 12.10. Any such request will include a certification by Vertical Developer that (i) it has satisfied the requirements of Section 12.10(a)(i) and (ii) that to its actual knowledge, Port is not in default under this Agreement or the Parcel Lease. Port will have at least ten (10) business days to respond to such request.

12.12. ***Safety Matters.*** Vertical Developer will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining or nearby property, or the risk of injury to members of the public, caused by or resulting from the performance of its development of the Vertical Project. Vertical Developer will erect appropriate construction barricades to enclose the areas of such construction and maintain them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

12.13. ***Post-Closing Boundary Adjustments.*** The Parties acknowledge that, as development of the 28-Acre Site advances, the description of each parcel of real property may require further refinements, which may require minor boundary adjustments. The Parties agree to cooperate in effecting any required boundary adjustments consistent with ***Section 21.2*** (Technical Changes). Vertical Developer agrees that all conveyance agreements from Vertical Developers to any transferees of the Property will include the obligation to cooperate with Port.

12.14. ***The Construction Documents.***

(a) **Construction Documents Generally**. "**Construction Documents**" will consist of Schematic Drawings, Design Development Documents and Final Construction Documents, as described below and must also comply with ***Sections 12.13(a)(iv)*** and ***12.13(a)(v)*** and the terms and conditions of this Agreement. As used in this Agreement "Construction Documents" excludes any contracts between Vertical Developer and any contractor, subcontractor, architect, engineer or consultant.

(b) "**Design Development Documents**" means drawings and plans in sufficient detail and completeness to show that the Vertical Project and the construction thereof will comply with the Project Requirements and will generally include the following:

(1) Site plan(s) at appropriate scale showing the building, streets, walks, and other open spaces. All land uses shall be designated. All site development details and bounding streets, points of vehicular and pedestrian access shall be shown.

(2) All building plans and elevations at appropriate scale.

(3) Building sections showing all typical cross sections at appropriate scale.

(4) Floor plans.

(5) Plans for public access areas showing details of features intended to be Constructed as part of the Improvements.

(6) Outline specifications for materials and finishes.

(7) Plans for interior and exterior signs required by the Port Building Code.

(8) Site and exterior and interior (for common areas only) lighting plans.

(9) Material and color samples for exterior facades, public plazas and open space, and other public areas, generally representative of the intended finished look.

(10) Roof plans showing all proposed mechanical and other equipment, vents, photo-voltaic panels, satellite dish(es), antennae(s), and mechanical or elevator penthouses.

(11) Geotechnical, structural, and other engineering assessments and investigation reports.

(12) Stormwater management plan.

(c) **"Final Construction Documents"** means plans and specifications required under applicable building codes to be submitted with an application for a building permit or addendum upon which Vertical Developer and its general contractor will rely to construct the Vertical Project.

(d) "**Schematic Drawings**" generally means: (a) a site plan at appropriate scale showing relationships of the Improvements and their respective uses, designating public access areas, open spaces, walkways, loading areas, streets, parking, and adjacent uses--adjacent existing and proposed streets, arcades and structures also should be shown; (b) conceptual plans for public access areas showing details of features intended to be constructed as part of the Vertical Project; (c) building plans, floor plans and elevations at appropriate scale and in detail sufficient to describe the Vertical Project, the general architectural character, and the location and size of uses; (d) perspective drawings sufficient to illustrate the Vertical Project; and (e) building sections showing all typical cross sections at appropriate scale and height relationships of those areas noted above.

(e) **Preparation of Construction Documents by Licensed Architect.** The Construction Documents must be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California, in consultation with a licensed historic preservation architect for purposes of complying with the Secretary's Standards as determined by the California State Historic Preservation Officer (**"SHPO"**) and NPS. A California licensed architect will coordinate the work of any associated design professionals, including engineers and landscape architects.

(f) **Certification by Structural Engineer**. A California licensed structural engineer must review and certify (by wet-stamp on the Construction Documents) all final structural plans and the sufficiency of structural support elements to support the Vertical Project.

12.15. ***Submission of Schematic Drawings and Construction Documents.***

Vertical Developer will prepare and submit the Construction Documents meeting the requirements of ***Section 12.13*** above to Port for review and approval or disapproval, as provided in ***Sections 12.15 and 12.16***. Each stage of document submittal is intended to constitute a further development and refinement from the previous stage. The elements of the Design Development Documents requiring Port approval will be in substantial conformance with the Schematic Drawings and the Scope of Development, and will incorporate conditions, modifications, and changes specified by the Port or required as a conditions of Regulatory Approvals. Design Development Documents will be in sufficient detail and completeness to show that the Vertical Project and the construction thereof will comply with the Project

Requirements and matters previously approved. Final Construction Documents will be a final expression of, and be based upon and substantially conform to, the approved Design Development Documents.

12.16. ***Port Review of Schematic Drawings and Construction Documents.***

(a) **Scope of Review**.

(i) *Generally*. Port's review and approval or disapproval of the Construction Documents under this Agreement will be reasonable and address the following: (i) conformity and compliance with the Project Requirements, (ii) exterior architectural appearance and aesthetics of the Historic Buildings, (iii) alterations to any of the Historic Buildings (iv) design and appearance of interior and exterior historic fabric and spaces that are subject to regulation under the State's Historical Building Code and the Secretary's Standards, and (v) landscape and design of all outdoor areas, including those required under Regulatory Approvals or pursuant to this Agreement to be accessible to the public. Port will review exterior signs (which may be submitted for approval with Schematic Drawings or during or post-construction) for consistency with the Design for Development, the Building Signage Plan approved by the Port pursuant to the DDA and the Secretary's Standards. Should Port identify a conflict among the Project Requirements, it will resolve such conflicts in favor of compliance with Secretary Standards, subject to compliance with all applicable laws.

(ii) *Review of Elements Subject to Secretary Standards by SHPO*. At least thirty (30) business days before submitting to SHPO, the final Historic Preservation Certification Applications, Part 2 – Description of Rehabilitation, for the Vertical Project, if any ("**SHPO Submittals**"), Vertical Developer shall provide copies of same to Port for review and comment. Port's review of the SHPO Submittals will be subject to the standards outlined in ***Section 12.15(a)(i)***. So long as the SHPO Submittals comply with the Project Requirements, Port will co-sign the SHPO Submittals if required, and if SHPO has recommended and NPS has approved or subsequently approves elements of the SHPO Submittals as being consistent with the Secretary's Standards, Port will also agree that such SHPO approved elements are consistent with the Secretary's Standards. If Vertical Developer is seeking Historic Preservation Tax Credits for the Vertical Project, then in no event will Port condition or disapprove the Schematic Drawings or any other Construction Document on the basis of elements that have been approved by the SHPO and National Park Service for purposes of certifying the Vertical Project for Historic Preservation Tax Credits.

(b) **Effect of Review**. Subject to ***Section 12.15(a)(ii)***, Port's review and approval or disapproval of the Construction Documents will be final and conclusive. Except by mutual reasonable agreement with Vertical Developer, Port will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously.

(c) **Method of Port Action/Prior Approvals**. Port will (i) approve or (ii) provide comments, propose changes, or both on each set of Construction Documents, in writing, within 30 days of receipt, so long as each set of the applicable Construction Documents meet the requirements described in ***Section 12.13*** above. Port may propose changes to the Constructions Documents that do not conflict with Project Requirements or previously approved Construction Documents. If Port proposes changes to the applicable Construction Documents, Vertical Developer and Port will promptly meet and confer in good faith to reach an agreement on any such changes proposed for a period of not more than 21 days, as may be extended by mutual agreement. Coming out of this meet and confer process, Vertical Developer will incorporate any revisions to the Construction Documents into its subsequent submittal of Construction Documents to Port.. Upon receipt of the resubmittal of the Construction Documents, Port will approve, disapprove or approve conditionally the Construction Documents, in writing. Notwithstanding any other provision of this Agreement or the Parcel Lease to the contrary, Port's approval of the Construction Documents in its proprietary capacity under this Agreement

will not, evidence or be deemed to evidence Port's approval of the Final Construction Documents in its regulatory capacity. Approval of Construction Documents by Port will not be construed as approval of such documents by SHPO or NPS.

(d) **Timing of Port Disapproval/Conditional Approval and Vertical Developer Resubmission**. If Port disapproves aspects of the Construction Documents in whole or in part, Port in the written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions will be stated in writing and a time will be stated for satisfying the conditions. Vertical Developer will resubmit as expeditiously as possible and may continue making resubmissions until the approval of the submissions. Approval of Construction Documents by Port will not be construed as approval of such documents by SHPO or NPS

12.17. *Changes in Final Construction Documents*

(a) **Approval of Changes in Required Elements**. Vertical Developer will not make or cause to be made any material or substantial changes in any Port-approved Construction Documents as to the specific elements approved by Port as provided in ***Section 12.15(a)(i)*** (each a "**Required Element**") without Port's express written approval in its reasonable discretion; provided, however, if certain materials approved by the Port are not available for construction, the Vertical Developer may substitute materials which are the architectural and environmental equivalent or superior as to aesthetic appearance, qualify, color, design and texture, as approved by the Port in its reasonable discretion. Prior to making any changes that Vertical Developer considers to be non-material to any Port approved Construction Documents as to Required Elements, including substituting materials that are the architectural equivalent as to aesthetic appearance, quality, color, transparency, design and texture, Vertical Developer must first notify Port in writing of such changes in Required Elements. If Port determines that such noticed changes are material or substantial, Port will respond to Vertical Developer within 15 days of receipt of such request.

(b) **Response**. Vertical Developer will request Port's approval for all material or substantial changes in Required Elements in writing. Any such changes proposed for any Construction Document after the approved Schematic Drawings will expressly include the request for approval, which the Port will consider with the applicable submittal under ***Section 12.15(c)***. In addition to the notice parties set forth ***Article 30*** (Notices), Vertical Developer will deliver by electronic mail (or other format reasonably requested by Port) copies of all requests for Port's approval of material or substantial changes to Required Elements to the following parties: Port's Deputy Director of Real Estate and Development, Port's in-house historic expert, and Port's project manager for the Property. If Vertical Developer requests a material or substantial change in a Required Element outside of a Construction Document submittal, then Port will respond to Vertical Developer as promptly as reasonably possible, but in no event later than twenty (20) days after receipt of Vertical Developer's request. If Port fails to respond to such request on or after fifteen (15) days after Vertical Developer's written request, Vertical Developer will submit a second written notice to Port (including the Port parties set forth in this ***Section 12.16(b)***) requesting Port's approval or disapproval within five (5) business days after receipt by Port of Vertical Developer's second notice. The second notice shall display prominently on the envelope enclosing such request and the first page of such request (or the subject line in any notice delivered by electronic mail), substantially the following: "**APPROVAL REQUEST FOR PIER 70 VERTICAL PROJECT CONSTRUCTION REVIEW MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.**" If Port fails to respond within such five (5) business day period, such changes will be deemed approved; provided, however, Port's response by electronic mail only will be deemed a sufficient response for purposes of this ***Section 12.16(b)***. All changes to the Construction Documents must be consistent with the Secretary's Standards, and

with all other Laws as determined by Port in the exercise of its reasonable discretion. Notwithstanding the foregoing, if Vertical Developer requests a material or substantial change to approved Final Construction Documents once construction of the Vertical Project has commenced, Port will respond as promptly as reasonably possible to avoid construction delays, but in no event later than five (5) business days after Vertical Developer's request. If Port fails to respond within such three business day period, Vertical Developer may submit a second notice, consistent with the requirements set forth above in this subsection (b). If Port fails to respond within a two business day period after the second notice, Port's approval, in its proprietary capacity hereunder, the changes will be deemed approved.

(c) If Port disapproves of Vertical Developer's request and Vertical Developer disagrees with Port's disapproval, both Parties agree to use their commercially reasonable effort to reach a solution expeditiously that is mutually satisfactory to Vertical Developer and Port.

12.18. ***Conflict With Other Governmental Requirements.***

(a) **Approval by Port**. Port will not withhold its approval, where otherwise required under this Agreement, of elements of the Construction Documents or changes in Construction Documents required by any other governmental body with jurisdiction if all of the following have occurred:

(i) Port receives written notice of the required change;

(ii) Port is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction of and requiring such element or change and with Vertical Developer and its design team;

(iii) Vertical Developer cooperates fully with the governmental body having jurisdiction in seeking reasonable modifications of such requirement, or reasonable design modifications of the Vertical Project, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to Port may be achieved despite the imposition of such requirement; and

(iv) any conditions imposed in connection with such requirements are subject to ***Article [11]***.

(b) **Efforts to Attempt to Resolve Disputes**. Vertical Developer and Port recognize that the foregoing kind of conflict may arise at any stage in the preparation of the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of building permits. Accordingly, time is of the essence when such a conflict arises. Both Parties agree to use their commercially reasonable efforts to reach a solution expeditiously that is mutually satisfactory to Vertical Developer and Port.

12.19. ***Progress Meetings/Consultation***. During the preparation of Construction Documents and the Construction of the Vertical Project, Port staff and Vertical Developer agree to hold periodic progress meetings, as appropriate considering Vertical Developer's progress, to coordinate the preparation of, submission to, and review by Port of Construction Documents and the construction process. Port staff and Vertical Developer (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration. Upon reasonable prior notice to Vertical Developer, Port may, but is not obligated to, have one or more individuals present on the Property at any time and from time to time during construction, to observe the progress of Construction of the Vertical Project and to monitor Developer's compliance with this Agreement, subject to compliance with reasonable safety measures imposed by Vertical Developer.

12.20. *Submittals after Completion.*

(a) **Record Drawings**. Vertical Developer shall furnish Port Record Drawings of the Vertical Project improvements constructed on, in, under and around the Property. Record Drawings must be in the form of full-size, hard paper copies and converted into electronic format as full-size scanned TIF files, and (2) in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "Record Drawings" means drawings, plans and surveys showing the Subsequent Construction as built on the Property and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Vertical Developer fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Subsequent Construction, and the cost of preparing such Record Drawings must reimbursed by Vertical Developer to Port as Additional Rent. Nothing in this Section shall limit Vertical Developer's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity. Vertical Developer will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Vertical Developer's request, Port will provide Vertical Developer with a release from liability for future use of the applicable materials, in a form acceptable to Vertical Developer and Port.

(b) **Record Drawing Requirements**. Record Drawings must be based on no less than 24" x 36", with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing must have a Port-assigned number placed onto the title block prior to scanning. An index of drawings shall be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings must be scanned as a test, prior to execution of this requirement in full.

12.21. ***Insurance Requirements***

(a) **Before Initial Close of Escrow**. Before the Initial Close of Escrow, Vertical Developer will procure and maintain insurance coverage set forth in the Parcel Lease for the Historic Buildings.

(b) **After Initial Close of Escrow**. From and after the Initial Close of Escrow, Vertical Developer's requirement to maintain insurance under this Agreement will be as set forth in the Parcel Lease.

(c) **Port Self-Help Right to Obtain Insurance**. After five (5) days' written notice to Vertical Developer, Port has the right, but not the obligation, to obtain, and thereafter continuously to maintain, any insurance required by this Agreement that Vertical Developer fails to obtain or maintain, and to charge the cost of obtaining and maintaining that insurance to Vertical Developer; provided, however, if Vertical Developer reimburses Port for any premiums and subsequently provides such insurance satisfactory to Port, then Port agrees to cancel the insurance it obtained and to credit Vertical Developer with any premium refund less any other costs incurred by Port resulting from Vertical Developer's failure to obtain or maintain the required insurance.

(d) **Indemnity**. The Indemnification requirements under this Agreement, the Parcel Lease, or any other agreement between Port and Vertical Developer, will in no way be limited by any insurance requirements under any such agreements.

12.22. ***Building Permit.*** Vertical Developer will submit to Port a complete application for a building permit (or site permit or equivalent) and will make deferred submittals in accordance with the Port Building Code for the remainder of the Vertical Project in a diligent and expeditious

manner. Upon any such submission, Vertical Developer will prosecute the application diligently to issuance.

12.23. ***Information Required by the County Assessor.*** The County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable transfers of property. Exhibit L lists the information that the County Assessor expects to need in order to perform the foregoing tasks (the "**Assessor Information**"). Each Party will provide to the County Assessor any Assessor Information requested in writing by the County Assessor in the format required by the County Assessor (the "**Requested Information**") within 90 days of the applicable Party's receipt of a written request for such Requested Information. Port's sole remedy with regards to a breach of this Section 12.14 is specific performance, Port hereby waiving all other rights and remedies available at law or equity. Vertical Developer waives any right to confidentiality under applicable law to the extent necessary for the County Assessor to notify Port of Vertical Developer's failure to provide the Requested Information on a timely basis and Port to exercise its right to specific performance of Vertical Developer's obligation. Promptly following the County Assessor's request, Port may, from time to time update the information requirements set forth in Exhibit L by providing Vertical Developer no less than ten (10) business days' prior notice and a replacement copy of Exhibit L.

H. **Default by Vertical Developer (Section 15.1)** of the Agreement will be supplemented to add the following event or circumstance that will constitute a Vertical Developer Default:

(k) After the Initial Close of Escrow, Vertical Developer fails to diligently proceed to commence within the times required under the Schedule of Performance, or after commencement fails to prosecute diligently to Completion (except for Deferred Items, if any), the Construction of the Vertical Project improvements in accordance with the Scope of Development, approved Construction Documents, and this Agreement, or commences construction of the Vertical Project but then abandons or ceases its work without the Approval of Port for more than one hundred and twenty (120) consecutive days or a total of one hundred and eighty (180) days (not counting any period of Force Majeure), and such failure, abandonment, or cessation continues for a period of forty-five (45) days following such Vertical Developer's receipt of notice thereof from Port;

I. **Article 22 (Definitions)** is revised to include the following new definitions:

"**Assessor Information**" is defined in ***Section 12.23***.

"**Completion Guaranty**" is defined in ***Section 6.4(a)(xix)***.

"**Construction Contract**" is defined in ***Section 6.4(a)(xvii)***.

"**Construction Documents**" is defined in ***Section 12.13(a)***.

"**Design Development Documents**" is defined in ***Section 12.13(b)***.

"**Development Budget**" is defined in ***Section 6.4(a)(xv)(1)***.

"**Final Construction Documents**" is defined in ***Section 12.13(c)***.

"**Finally Granted**" means that the action is final, binding and non-appealable and all applicable statutes of limitation relating to such action, including with respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to such action.

"**Hard Costs**" are defined in ***Section 12.7(a)***.

"**Historic Building Cost**" is defined in ***Section 12.7(a)***.

"**Historic Building Cost Trigger Date**" is defined in ***Section 12.7(a)***.

"**Historic Building Feasibility Gap**" is defined in ***Section 12.7(a)***.

"**History Building Schedule**" is defined in ***Section 12.7(a)***.

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

"**Letter of Credit**" is defined in ***Section 6.4(a)(xix)***.

"**Net Worth**" means the equity of an entity's owners (e.g., equity interest of shareholders of a corporation or members of a limited liability company) calculated in accordance with generally accepted accounting principles consistently applies or the income tax basis of accounting consistently applied.

"**NPS**" is defined in ***Section 6.4(a)(xx)***.

"**Obligor Net Worth Amount**" means Ten Million Dollars ($10,000,000.00) which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Effective Date and every ten (10) years thereafter.

"**Performance Bond**" is defined in ***Section 6.4(a)(xix)***.

"**Permissible Financing Costs**" is defined in ***Section 12.7(a)***.

"**Requested Information**" is defined in ***Section 12.23***.

"**Required Element**" is defined in ***Section 12.16(a)***.

"**Schematic Drawings**" is defined in ***Section 12.13(d)***.

"**SHPO Submittals**" is defined in ***Section 12.15(a)(ii)***.

"**Soft Costs**" is defined in ***Section 12.7(a)***.

"**Tenant Return**" is defined in ***Section 12.7(a)***.

J. **Historic Preservation Tax Credits (Article 23)** is hereby added to the Agreement to read as follows:

23. HISTORIC PRESERVATION TAX CREDITS

23.1. Qualifying for Tax Credits. Vertical Developer will use its best efforts during the Term of this Agreement to obtain Historic Preservation Tax Credits available for the Vertical Project in a timely manner. After NPS has reviewed the Part 1 Applications and made a determination that the Vertical Project is eligible for Historic Preservation Tax Credits, Vertical Developer will timely submit to NPS, a final Historic Preservation Certification Applications, Part 2 – Description of Rehabilitation for Historic Preservation Project.

23.2. Use of Tax Credits. Vertical Developer is expected to sell Historic Preservation Tax Credits to one or more tax credit investors and, in connection therewith, shall submit to Port an executed master sublease for the Historic Buildings to a new partnership or limited liability company to be formed with one or more third parties (collectively, "Tax Credit Investors") and controlled by Vertical Developer or its Affiliate, together with an executed operating agreement or limited partnership agreement and all related authority and governing documents or such other

evidence that is reasonably satisfactory to Port, indicating that Vertical Developer has entered into, or has a binding commitment to enter into, an agreement with the Tax Credit Investors to utilize the Historic Preservation Tax Credits in such partnership or limited liability company (each, a "master subtenant"). So long as the terms and conditions of the Parcel Lease are not changed in any way, Port hereby consents to any master sublease with such master subtenant.

Exhibit [ ]

Form of Performance Bond

Exhibit [__]

Scope of Development

Exhibit [ ]

Schedule of Performance for Buildings 12 and 21

Outside Date for Close of Escrow:	No later than three (3) years after the Effective Date hereof.*
Outside Date for Commencement of Construction:	No later than three (3) years after the Effective Date hereof.**
Completion of Construction:	From and after Commencement of Construction Vertical Developer must diligently prosecute construction of the Improvements to completion.***

*Subject to the provisions regarding time for performance and the procedures for Excusable Delay as set forth in Article 4 of the DDA (Performance Dates) including Down Market Delay (as defined in the DDA).

**Subject to the provisions regarding time for performance and the procedures for Excusable Delay as set forth in Article 4 of the DDA (Performance Dates) but expressly excluding Down Market Delay.

***Subject to allowable periods where construction may cease due to events of Excusable Delay, subject to the provisions regarding time for performance and the procedures set forth in Article 4 of the DDA (Performance Dates) but expressly excluding Down Market Delay.

Exhibit [ ]

Secretary of the Interior's Standards
for the Treatment of Historic Properties

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.