



**CITY AND COUNTY OF SAN FRANCISCO
EDWIN LEE, MAYOR**

APPENDIX TO TRANSACTION DOCUMENTS

FOR THE

PIER 70 28-ACRE SITE PROJECT

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**WILLIE ADAMS, PRESIDENT
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LESLIE KATZ, COMMISSIONER
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[REFERENCE DATE]

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APPENDIX

This Appendix is an integral part of all Transaction Documents for the mixed-use project at the 28-Acre Site and consists of:

- Part A: Standard Provisions and Rules of Interpretation
- Part B: Glossary of Defined Terms
- Part C: Index to Other Defined Terms

PART A: STANDARD PROVISIONS AND RULES OF INTERPRETATION

1. TRANSACTION DOCUMENTS.

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

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

1.3. Exhibits and Schedules.

(a) Purpose of Attachments. This Appendix and each attached exhibit are incorporated into and made a part of the Transaction Document to which they are attached. Each schedule attached to a Transaction Document is provided for reference when implementing the 28-Acre Site Project.

(b) Revisions to Attachments. The Parties agree that this Appendix and all attached exhibits and schedules may be revised from time to time by agreement based on changed circumstances and experience in the course of the 28-Acre Site Project. Each Party (including any applicable affected Transferee) will confirm its agreement by signing the revised document in counterparts, which will be deemed to be attached to each counterpart of the revised document and will supersede the document being revised.

(c) Attached Form Documents. Any form document attached to a Transaction Document reflects the Parties' intent to enter into a final document substantially in the form of the exhibit in the future, subject to requirements and limitations under the Transaction Documents.

1.4. Advance Writings Required.

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

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

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

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

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

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

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

2. PARTIES AND PERFORMANCE.

2.1. Joint and Several Liability. If Developer consists of more than one person, then the obligations of each under any Transaction Document to which it is a Party will be joint and several.

2.2. Performance Generally.

(a) Time.

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

(ii) Subject to this Paragraph, all required performance dates, including notice and cure deadlines, expire at 5:00 p.m. Pacific Standard or Daylight Savings Time, as applicable, on the stated date, unless extended under the Transaction Document under which performance is due.

(iii) Any reference to a week, quarter, or month without reference to a specific day will mean the last day in the period. Any reference to an anniversary means the day that is 365 days (366 in a leap year) after the prior date.

(iv) If a Party must give notice or take any other action within a specified minimum number of days that would not fall on a business day, then the Party must take

the action on the preceding business day. For example, if a Party is required to give at least five days' prior notice of an action and the fifth day before the desired action falls on a Sunday, the Party must give notice by the preceding business day.

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

(b) Extensions of Time.

(i) Each Party to a Transaction Document, acting in its sole discretion, may agree to extend the date for the other Party's performance of any term, covenant, or condition, or the other Party's exercise of any rights under the Transaction Document, without executing an amendment. Except as specified in **clause (iii)**, all extension agreements will be made by a countersigned writing. A Party may impose reasonable conditions on an extension of the other Party's time to cure a default. No extension of time will release any of the obligations subject to the extension or waive the granting Party's rights in relation to any other term, covenant, or condition of or any other default in the performance or breach of the Transaction Document under which the extension is granted.

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

(iii) The Port Commission must consider all other extension requests. Any Port Commission approval of an extension will be made by a resolution adopted at a public meeting.

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

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

(ii) If the electronic mail notice under **clause (i)** is not delivered timely, the responding Party will not be deemed to have consented until the sixth business day after the notice is delivered.

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

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

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

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

2.3. Successors and Assigns. The Parties are entering into the Transaction Documents only for the protection and benefit of the Parties and their successors as defined in **App Part C**, subject to **DDA art. 6** (Transfers) and **DDA art. 19** (Lenders' Rights) and in accordance with **App ¶ A.11.2** (Transferred Obligations) and **App ¶ A.12** (Transferred Rights).

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

2.5. No Limitation on Unrelated Rights. The rights and remedies under the Transaction Documents do not supersede or preclude any Party's exercise of its rights and remedies under other agreements and documents, or of the City, the Port, or any Other Regulator to require compliance with any Regulatory Approval or other entitlement granted for the 28-Acre Site Project.

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

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

3. GOVERNING LAW.

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

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

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

4. ACTIONS.

4.1. Attorneys' Fees.

(a) Prevailing Party. Should any Party file an action permitted or required under any Transaction Document, the prevailing Party will be entitled to recover its reasonable costs, including attorneys' fees, plus interest at the maximum amount allowed under law, from the losing Party. The ICA is specifically excepted from this prevailing party provision.

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

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

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

4.4. Limitations on Liability of the Parties.

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

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

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

(d) No Effect on Other Rights. This Paragraph will not affect any Party's right to recover actual damages that arise from a Breaching Party's failure to: (i) pay any sum when due under any Transaction Document; (ii) satisfy an indemnity under any Transaction Document; or (iii) pay attorneys' fees when due under an Arbitrator's decision or a court's final judgment.

(e) Project Payment Sources. Except as otherwise provided in any Transaction Document, Developer agrees as follows.

(i) All obligations of the Port or the City arising out of or related to each Transaction Document are special and limited obligations of the Port and the City, as applicable. The Port's and the City's respective obligations to make payments to

implement any Transaction Document are restricted strictly to Project Payment Sources described in the Financing Plan, and only to the extent those sources are available.

(ii) More specifically, in no event may Developer compel: (1) the City to use funds in or obligate the City's City General Fund; or (2) the Port to use funds in or obligate the Port Harbor Fund except as described in the Financing Plan, in either case to reimburse Developer's Horizontal Development Costs, pay any other costs associated with the 28-Acre Site Project, or satisfy any Developer Claim under any Transaction Document.

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

5. NOTICES.

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

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

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

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

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

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

5.5. Change of Address. Notices must be delivered to the addresses for notice as specified in the Transaction Documents, unless superseded by a notice of a change in address for notices that is delivered in accordance with **App ¶ A5.1** (Manner of Delivery).

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

6. PAYMENT DEMANDS.

6.1. Application. The following procedures will apply to any demand from one Party to another Party for payment whenever payment procedures are not specified in the Transaction Document under which demand is made.

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

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

7. USAGE GUIDELINES FOR DEFINED TERMS.

7.1. Definitions in Appendix. The glossary in **Appendix Part B** contains the definitions for terms used in the primary Transaction Documents.

7.2. Other Definitions. The index in **Appendix Part C** specifies where defined terms that are specific to certain implementing Transaction Documents are located.

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

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

- “Assign” applies to “Assignment,” “Assignee,” “Assignor,” and “Assigned.”
- “Begin construction” applies to “began to construct,” “beginning construction,” and “has begun to construct.”
- “Final Completion” applies to “Finally Complete.”
- “Indemnify” applies to “indemnity,” “indemnification,” and “indemnitor.”
- “Third party” applies to “third-party” and “third parties.”
- “Waive” applies to “waiver,” “waivers,” “waived,” and “waiving.”

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

- “Final Completion” as used in reference to Horizontal Improvements and Vertical Improvements incorporate conditions specific to each type of Improvement.

- The “Parties” to one Transaction Document may be different from the “Parties” to another Transaction Document.

8. INCONSISTENT PROVISIONS.

8.1. General Rule. Developer and the City Parties intend for any Transaction Document addressing specific rights and obligations to prevail over any inconsistent provisions in the Appendix or any other any Transaction Document for the 28-Acre Site Project. This general rule will apply to the primary Transaction Document as amended from time to time, whether or not the amendment is reflected in the Appendix.

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

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

9. REFERENCES WITHIN TRANSACTION DOCUMENTS.

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

10. REFERENCES TO DOCUMENTS.

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

11. RESPONSIBILITY FOR ACTS AND OBLIGATIONS.

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

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

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

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

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

12. TRANSFERRED RIGHTS.

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

13. DOCUMENT HEADINGS AND REFERENCES.

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

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

14. RECITALS.

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

15. WORDS OF INCLUSION.

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

16. GENDER AND NUMBER.

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

17. NUMERALS.

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

18. TIME PERIODS.

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

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

19. STATUTORY REFERENCES.

References to specific code sections mean San Francisco Municipal Ordinances unless otherwise specified or required by context. References to any law mean the law as in effect on the

Reference Date and as amended at the time in question, unless specifically stated otherwise or to the extent subject to limitations under the Development Agreement.

20. NO PARTY DRAFTER.

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

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PART B: GLOSSARY OF DEFINED TERMS

The following terms have the meanings given to them below. Defined terms that are not capitalized in Appendix Part B and Part C are not capitalized when used in the Transaction Documents.

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

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

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

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

“**20th Street**” means the area within Pier 70 that the Port has ground leased to Historic Pier 70, LLC, with the same boundaries as Sub-Project Area G-1 of IFD Project Area G and the 20th Street CFD.

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

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

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

“**28-Acre Site**” is an approximately 28-acre area located in the southeast corner of Pier 70 described more particularly in **DDA Exh A1** (Legal Description) as shown on the site plan (**DDA Exh A2**).

“**28-Acre Site Affordable Housing Fee**” means the Project-specific Impact Fee imposed on Market-Rate Condo Projects under **AHP §** Error! Reference source not found. (Market-Rate Condo Projects).

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

“**28-Acre Site Project**” means the entitlement of the SUD and, on the Reference Date, the development of the FC Project Area, consisting of the horizontal and vertical development of the 28-Acre Site, the rehabilitation of the Historic Buildings for reuse in accordance with the Secretary’s Standards, and the construction of 20th Street, 21st Street, and 22nd Street east of Illinois Street in accordance with the Regulatory Requirements and the Project Requirements.

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

“**100-year flood**” means a flood having a 1% chance of occurrence in a given year.

“**AA**” is an acronym for the Acquisition Agreement.

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

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

“accept” means an Acquiring Agency’s or the Board of Supervisors’ final actions to accept any Developer Improvement for public ownership.

“Acquiring Agency” means the City Agency (the Port, SFPUC, or Public Works) that will acquire Developer Improvements under the Acquisition Agreement and accept the Developer Improvements.

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

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

“Acquisition Price Update” means one or more updates to the Phase Improvements, Components, and the preliminary Acquisition Prices listed in **AA Exh B** that Developer submits to the Port for Phase Improvements.

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

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

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

- (i) to secure the faithful performance or payment, or both, of the obligations secured thereby under **DDA art. 18** (Security for Project Activities);
- (ii) issued by a person that meets the Obligor Net Worth Requirement and is approved by the Port Director;
- (iii) limiting the Obligor’s liability to the Secured Amount plus the Port’s costs of enforcement; and
- (iv) that is in form and substance proposed by Developer and approved by the Port Director, including but not limited to a Guaranty, bonds, letters of credit, certificates of deposit or any other form that provides reasonable assurances regarding the obligations secured thereby. Any Adequate Security required by the Subdivision Code in connection with a final subdivision map shall conform to the requirements of the Subdivision Code.

“Adequate Security Requirements” means Developer’s obligations under **DDA art. 18** (Security for Project Activities).

“Administrative Delay” means an Excusable Delay caused when:

- (i) a Regulatory Agency fails to act on a Developer request or application within a reasonable time under its standard practices or as otherwise specified in the ICA, the Development Agreement, or the DDA; or

- (ii) an appeal body or court determines that a Regulatory Agency's act or failure to act on an application was improper following a challenge by Developer or a Vertical Developer Affiliate.
- (iii) for any matter that requires the execution and delivery of a Vertical DDA or Parcel Lease (*i.e.*, for the Arts Building and Historic Buildings 2 and 12 under **DDA § 7.12** (Historic Buildings 2 and 12), Developer has shown a good faith willingness to enter into the applicable agreement substantially in the forms attached to this DDA and in accordance with all other terms and conditions, but Port has delayed or failed to proceed with the execution and delivery of the applicable Vertical DDA or Parcel Lease.

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

“Administrative Fee” means:

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

“Administrative Fee” *excludes any Impact Fee or Exaction.*

“ad valorem tax” means a tax levied on a taxable real property interest, subject to the limitations of section 1 of article XIII A of the California Constitution.

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

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

“Advance of Land Proceeds Account” means the segregated account within the [Mello-Roos Fund/Tax Increment Fund] that the Port establishes with the Special Fund Trustee to receive, hold, and disburse [Allocated Tax Increment and Facilities Special Taxes] to pay the Pier 70 CFDs’ obligations under Promissory Note-LP.

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

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

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

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

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

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

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

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

“Affordable Housing Project” means the building that an Affordable Housing Developer builds on an Affordable Housing Parcel in which 100% of the Residential Units are BMR Units, with the exception of the manager’s unit. The inclusion of associated and ancillary uses, such as ground floor retail, child care, social services, parking, or other tenant-serving uses to the extent permitted by the Regulatory Requirements, will not affect the designation of the building as an Affordable Housing Project

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

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

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

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

“agree” excludes any unilateral decision.

“AHP” is an acronym for the Affordable Housing Plan (**DDA Exh B3**).

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

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

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

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

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

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

“ALTA” is an acronym for the American Land Title Association.

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

“AMI” means Area Median Income.

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

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

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

“**Annual Review**” is defined in the DA and means the periodic review of whether Developer has complied in good faith with the Development Agreement required under section 65865.1 of the Development Agreement Statute and Administrative Code section 56.17.

“**Annual Review Date**” is defined in the DA and means the date established by Administrative Code section 56.17 by which the Annual Review must begin.

“**App**” is a shorthand term sometimes used to refer to this Appendix.

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

“**Appendix G-2**” means the Project-specific infrastructure financing plan for Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4 that the Board of Supervisors approved by Ordinance No. XXXX, which is attached as Appendix G-2 to the IFD Financing Plan.

“**Applicable Law**” means, individually or collectively, any law that applies to development, use, or occupancy of or conditions at the 28-Acre Site.

“**Applicable New Law**” means, individually or collectively:

- (i) a New City Law amending the Construction Codes;
- (ii) a New City Law adding or amending any other Existing City Law to protect the public health and safety; and
- (iii) changes in federal or state law that apply to the 28-Acre Site Project as described in **DA art. 5** (City’s Obligations).

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

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

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

“**Approved Arbiters Pool**” means **DDA Sch 1**, as revised under **DDA § 10.1** (Arbiters).

“**Approved Payment Request**” means a Payment Request that the Chief Harbor Engineer has approved or is deemed to have approved under **AA § 4.2(d)** (Deemed Approval).

“**Arbiter**” means an arbitrator who will preside over any arbitration proceeding.

“**Arbitration Start Date**” means the date on which a selected Arbiter confirms in writing to the Parties that the Arbiter is available and willing to serve.

“**Architect**” means the licensed architect of record for any Improvements.

“**Architect’s Certificate**” means a certificate signed by the Architect verifying that a Vertical Developer has completed the specified Vertical Improvement under the Construction Documents.

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

“Army Corps” means the Army Corps of Engineers.

“Artist Transition Plan” means a transition plan prepared in accordance with **DDA Section 7.14** that will govern the procedures and requirements for the relocation of the Noonan Tenants meeting the requirements of **DDA Section 7.14(a)(i) through (iv)**.

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

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

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

“Arts Building Funding” means the application of up to \$4 million to fund the Arts Building if the Vertical Developer demonstrates to the Port that it has raised \$17.5 million in private financing towards the Arts Building.

“Arts Building Proceeds” means the Arts Building Special Taxes and the proceeds of any Mello-Roos Bonds secured by the Arts Building Special Taxes, which may be used to finance (i) the Noonan Replacement Space, (ii) the Arts Building provided certain conditions are met as set forth in the Financing Plan, and (iii) community facilities provided the CF Conditions are met.

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

“Arts Building Special Taxes” means Improvement Special Taxes that are levied to finance the Noonan Replacement Space and, under certain conditions, the Arts Building Funding and the community facilities in accordance with the RMA for (i) the Pier 70 Leased Property CFD and/or (ii) the Pier 70 Condo CFD.

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

“As-Built Drawings” means design and permit drawings and plans and specifications of Improvements in their final form and as-built field documents prepared during the course of construction.

“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).

“Assessment Shortfall” means the positive difference between:

- (i) the amount of property taxes that would have been levied on a Taxable Parcel by application of the *ad valorem* tax on its Baseline Assessed Value, as escalated to a specified City Fiscal Year; and

- (ii) the amount of property taxes actually levied on the Taxable Parcel after Reassessment.

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

“Assignment” means to assign, convey, hypothecate, or otherwise transfer all or any of the assigning party’s interest in the DDA.

“Associated Public Benefits” means the Developer Construction Obligations identified as Associated Public Benefits in the Schedule of Performance.

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

“AWSS” means the City’s auxiliary water supply system.

“base flood” means a 100-year flood.

“Baseline Assessed Value” means the assessed value of a Taxable Parcel in the SUD in the City Fiscal Year in which the Chief Harbor Engineer issues the related Final Certificate of Occupancy.

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

“BMR Credit” means a credit equal to the number of BMR Units anticipated to be developed on each Affordable Housing Parcel in a Phase for purposes of calculating the Interim Affordable Percentage. BMR Credit will be given for an Affordable Housing Parcel only on the applicable Affordable Housing Completion Date. Unless the Parties agree otherwise, Parcel C1B will have 100 BMR Credits, Parcel C2A will have 100 BMR Credits, and Parcel K South will have 121 BMR Credits.

“BMR Units” has the meaning give such term in the Affordable Housing Plan.

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

“Bona Fide Institutional Lender” means any one or more of the following, whether acting in its own interest and capacity or in an agency or a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lenders: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a licensed California finance lender, any agency or instrumentality of the United States government or any state or City governmental authority, a real estate investment trust, a religious, educational or charitable institution, an employees’ welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any entity directly or indirectly sponsored or managed by any of the foregoing, or other lender, all of which, at the time a Permitted Lien is recorded in favor of such entity, owns or manages assets of at least Five Hundred Million Dollars (\$500,000,000) in the aggregate (or the equivalent in foreign currency), or (ii) any Affiliate of any of the foregoing.

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

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

“Books and Records” means books and records that Developer and the Port will prepare and maintain under FP § [XXXX] (Books and Records).

“Borrower” when used in reference to a Permitted Lien means Developer, a Vertical Developer, or a permitted Transferee with rights and obligations under the DDA directly or through a Vertical DDA or an Assignment or Assumption Agreement or both.

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

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

“Capital Costs” means the Entitlement Sum, other Horizontal Development Costs, Developer Capital and Developer Return, and Port Capital and Return on Port Capital and other costs incurred by the Developer under the Financing Plan.

“Capital Improvements Account” means _____.

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

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

“CEQA Findings” means findings adopted by the Planning Commission, the Port Commission, the Board of Supervisors, and any Other City Agency under CEQA Laws in connection with the Project Approvals.

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

“CEQA Laws” means CEQA, the CEQA Guidelines, and the CEQA Procedures, collectively.

“CEQA Procedures” means Administrative Code chapter 31.

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

“CF Election” means the Port’s notice that the City will accept Developer’s proffer of Community Facility Space under **DDA § 7.19** (Community Facilities).

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

“CFD Administrative Costs” means the reasonable costs that the Port, as CFD Agent for each CFD in the SUD, actually incurs and pays for:

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

To the extent that any of the costs incurred apply to more than one CFD, each CFD will pay only for that CFD’s proportionate share of such costs.

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

“CFD Agent” means the Port, acting on behalf of each CFD as authorized in the applicable CFD Formation Proceedings.

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

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

“CFD Law” means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), as amended from time to time solely to the extent required by a City-wide vote, which incorporates the Mello-Roos Community Facilities Act of 1982 (Cal. Gov’t Code §§ 53311-53368).

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

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

“Chief Harbor Engineer” means the Port’s Deputy Director, Engineering, or his designee.

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

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

“City Delay Notice” means a notice from Planning to the Port that the City has reasonably determined that delaying office development at the 28-Acre Site is necessary to allow the City to balance its planning objectives for Pending Projects elsewhere in the City under procedures described in **DDA Exh A5**.

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

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

“City Law” means any City ordinance or Port code provision and implementing regulations and policies governing zoning, subdivisions and subdivision design, land use, rate of development, density, building size, public improvements and dedications, construction standards, new construction and use, design standards, permit restrictions, development impacts, terms and conditions of occupancy, and environmental guidelines or review at the 28-Acre Site, including, as applicable:

- (i) the Waterfront Plan and the Design for Development;
- (ii) the Construction Codes, applicable provisions of the Planning Code, including the SUD Amendments, the Subdivision Code and the General Plan,
- (iii) local Environmental Laws and the City’s Health Code; and
- (iv) the Other City Requirements.

“City Party” means the Port and the City and their respective Agents, including commissioners, supervisors, and other elected and appointed officials.

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

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

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

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

“Close of Escrow” means that all conditions to a Port conveyance of a Development Parcel have been satisfied or waived and actions required to effect the conveyance are complete.

“Closing” is a term used to refer to the Close of Escrow.

“Closing Date” means either (i) Developer’s projected date to Close of Escrow on the Master Lease under **DDA § 8.5(b)** (Closing Deliveries) or (ii) the date that an Escrow for an Option Parcel Closes.

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

“CLTA” is an acronym for the California Land Title Association.

“CM/GC” is an acronym for construction manager/general contractor, an approach to construction contracting in which a construction manager/general contractor is retained during the design process to review and provide comments as to the constructability of the project architect/engineer’s design with an established budget.

“CMD” is an acronym for the Contract Monitoring Division of the City’s General Services Agency.

“Commence Construction” or **“Commencement of Construction”** means the start of substantial physical construction as part of a sustained and continuous construction plan.

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

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

“Common Control” means that two Persons are both Controlled by the same other Person.

“Community Facility Space” is space that the City may request for community facilities under **DDA § 7.19** (Community Facilities).

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

“Completed Residential Unit” means a Residential Unit in the AHP Housing Area for which the Port has issued a Temporary Certificate of Occupancy.

“Component” means a discrete portion or phase of a Horizontal Improvement that has an estimated construction cost over \$1 million.

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

“Condo Unit” means a single-family residential unit that a Vertical Developer sells in fee, which will be treated as a Taxable Parcel in the Financing Documents.

“Consent” means Developer’s or a City Agency’s executed approval of its agreement with the Transaction Document to which the Consent is attached.

“Consistency Determination” means the Port’s finding that Developer’s proposed submittal to a City Agency complies and is consistent with prior approvals and Project Requirements.

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

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

“Construction Permit” means:

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

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

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

Controlled and Controlling have correlative meanings.

“Controller” means the Controller of the City and County of San Francisco.

“Controlling Interest” means the interest held by a person with the power to Control an entity.

“convey” means to transfer an interest in real property by ground lease, deed, or other instrument.

“Cost Allocation Proposal” means Developer’s proposed allocation of Horizontal Development Costs under **AA § 4.1(e)** (Cost Allocation).

“Costa-Hawkins Act” means the Costa-Hawkins Rental Housing Act (Cal. Civ. Code §§ 1954.50-1954.535).

“costs” means actual and reasonable expenses, fees, and other charges directly arising from or relating to the matter giving rise to a right to payment.

“CPA” is an acronym for an independent certified public accounting firm approved by the Port and Developer.

“CPI” is an acronym for the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose region (base period 1982-1984=100) that the United States Department of Labor, Bureau of Labor Statistics, publishes in February, April, June, August, October, and December of each year. If the index is changed after the Reference Date to use a different base year, CPI will be calculated using the published conversion factor. If publication is discontinued and not replaced, the Parties will confer to reach agreement on a substitute measure.

“CPI (Residential)” means the portion of the CPI for the “Housing” expenditure category only.

“Credit Bid” means a Vertical Developer Affiliate’s deemed payment of Land Proceeds to the Port, subject to the limitations and conditions of **FP § 3.3** (Right to Credit Bid) and **FP § 3.4** (Amount of Credit Bid) or the act of paying by the deemed payment when used as a verb.

“Credit Bid Determination Date” means 15 days before Developer exercises an Option on an Option Parcel.

“Cumulative IRR” means Developer’s cumulative internal rate of return calculated through the date of determination.

“Current Assessed Value” means a Taxable Parcel’s Baseline Assessed Value, as escalated by the Assessor on the date in question.

“Current Phase” means the Phase of the 28-Acre Site Project during which an event or determination occurs.

“DA” is an acronym for the Development Agreement.

“DA Ordinance” means Ordinance No. XXXX adopting the Development Agreement, incorporating by reference the General Plan Consistency Findings, and authorizing the Planning Director to execute the Development Agreement on behalf of the City.

“DBI” is an acronym for the City’s Department of Building Inspection.

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

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

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

“debt service” means the amount of cash required to pay principal and interest on Bonds under an Indenture, taking into account required funding and replenishment of reserves, administrative costs, and coverage ratios.

“debt service” excludes capitalized interest and any other amounts that are funded from gross bond proceeds for the payment of debt service before net bond proceeds are available for disbursement under an Indenture when used in reference to payments to be funded with Mello-Roos Taxes or Tax Increment in any year.

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

“Deferred Infrastructure” means the Horizontal Improvements that will be constructed at or around the same time as associated Vertical Improvements, consisting of (i) utility services and associated vaults, plantings, sidewalk, furnishings, and other Improvements installed within the area between back-of-curb and the adjacent Development Parcel boundary, and (ii) Public Spaces, Public ROWs and Utility Infrastructure located within Deferred Infrastructure Zones identified by Developer in accordance with Section 15.4(b) of the DDA.

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

“Deferred Infrastructure Zone” is defined in **DDA § 15.4(c)** (Deferred Infrastructure Zones).

“Design Advisory Committee” means a Port Director -appointed committee composed of qualified design professional to make design recommendations to the Port Commission on Schematic Design Applications under **DDA § 13.9(d)** (Review of Complete Applications).

“Design for Development” means the Pier 70 Design for Development that the Port Commission and the Planning Commission approved.

“Determination of Completion” means a determination by the Chief Harbor Engineer, based upon his or her review the “Developer Self-Certification for Completion” that the applicable Phase

Improvement or Component thereof is Finally Complete, as more particularly provided in **DDA §15.4**.

“Developer” means FC Pier 70, LLC, and its successors and assigns.

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

“Developer Balance” means, on the date of determination, the sum of Developer’s unreimbursed Entitlement Sum, Horizontal Development Costs from the Current Phase and any Prior Phase, plus related accrued and unpaid Developer Return on the Entitlement Sum and the Horizontal Development Costs, as shown on the Developer Capital Schedule.

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

“Developer Capital” means funds expended by Developer under the Financing Plan on Horizontal Development Costs, Deferred Infrastructure, and Entitlement Costs.

“Developer Capital Schedule” means an accounting schedule that Developer maintains that shows (i) the expenditures and reimbursements of Developer Capital and (ii) accrued and unpaid Developer Return, for all Phases of the 28-Acre Site Project individually and in the aggregate, which will be used to determine the Developer Balance at any given time. **FP Sch 2** contains sample calculations of the Developer Balance.

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

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

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

“Developer Construction Obligations” excludes Port Improvements and any Deferred Infrastructure that any Vertical Developer will construct in accordance with its Vertical DDA.

“Developer Improvements” means Horizontal Improvements constructed or funded by Developer Capital.

“Developer Marketing Costs” means costs associated with marketing the site including interim activation, events associated with openings of public improvements and other activities that benefit project land and user absorption, overall Pier 70 site branding and recognition, except to the extent Developer passes-through and receives reimbursement for such costs to Vertical Developers, subject to a maximum amount of \$920,000 million (NPV 2018\$) in reimbursable costs unless otherwise approved by Port in its sole discretion as provided in **FP § [XX]**.

“Developer Mitigation Measure” means any Mitigation Measure in the MMRP (**DDA Exh B5**) that is to be performed by Developer or a Vertical Developer or that is otherwise identified as the responsibility of the “owner” or the “project sponsor.”

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

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

“Developer Reimbursement Obligations” means Developer’s duty under the DDA to indemnify the City Parties and pay Port Costs and Other City Costs.

“Developer Reimbursement Obligations” excludes Developer’s use of Developer Capital to finance Horizontal Improvements.

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

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

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

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

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

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

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

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

“Director of Public Finance” means the director of the Public Finance Division of the Controller’s Office.

“Director of Public Works” means the Director of San Francisco Public Works.

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

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

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

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

“Down Market Notice” means a Party’s notice delivered under **DDA § 4.5(a)** (Timing).

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

“Down Market Test Date” means the date a Down Market Test is final.

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

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

“Early Lease Parcel” means an Option Parcel to be ground leased early in a Phase, as designated in Developer’s Phase Submittals for Phase 1 and Phase 2.

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

“eligible” means Entitlement Costs, Horizontal Development Costs, Developer Return, Return on Port Capital, and Interest on Land Proceeds that may be paid from Public Financing Sources under Governing Law and Policy.

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

“Encumbered Property” means the specific real property interest in a Development Parcel that is the collateral under a Permitted Lien.

“Engineer” means the licensed engineer of record for Horizontal Improvements.

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

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

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

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

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

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

“Environmental Delay” means an Excusable Delay caused when:

- (i) the Port or the City is required to conduct additional environmental review or prepare additional environmental documents after the Planning Commission and Port Commission have certified the Final EIR and City staff has filed a notice of determination;
- (ii) a third party files an action challenging the certification or sufficiency of the Final EIR or any other additional environmental review, even if development activities are not stayed, enjoined, or otherwise prohibited;

- (iii) the unanticipated need to investigate, remediate, or otherwise correct previously unknown environmental or geotechnical conditions on or affecting any portion of the FC Project Area, but only if the conditions were not reasonably discoverable in the course of Developer's due diligence before the Reference Date; or
- (iv) the unanticipated need to comply with any Mitigation Measures adopted for the 28-Acre Site Project for conditions on or affecting any portion of the FC Project Area, but only if the conditions were not reasonably discoverable before the Reference Date and by their nature require a delay or work stoppage for investigation, remediation, or related activities, as long as the Party claiming delay is proceeding in a diligent manner to resolve the unforeseen issues.

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

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

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

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

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

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

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

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

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

“Event of Default” means a Breaching Party's failure to cure a noticed breach within the cure period specified in **DDA § 11.2** (Events of Default by Developer), **DDA § 11.3** (Events of Default by the Port), or any other Transaction Document, as applicable.

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

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

“Exaction” excludes *Mitigation Measures and any federal, state, or regional impositions.*

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

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

“Excusable Delay” excludes:

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

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

“Existing City Law” is defined in the DA and means any City Law in effect on the Reference Date.

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

“Existing Geotechnical Condition” excludes *the Existing Hazardous Material Condition of the 28-Acre Site.*

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

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

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

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

“Facilities Special Tax Fund” means the segregated accounts within the Special Fund Trust Account that the Port, as CFD Agent, will establish with the Special Fund Trustee to receive, administer, and disburse Mello-Roos Taxes on behalf of the CFDs through the Special Fund Administration Agreement, which are expected to consist of: **[Confirm accounts before Project Approvals]**

- (i) the Pier 70 CFD Facilities Account;

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

“Facilities Special Taxes” means Improvement Special Taxes that are levied to finance eligible Improvements in accordance with the RMA for (i) the Pier 70 Leased Property CFD, (ii) the Pier 70 Condo CFD, and/or (iii) the Hoedown Yard CFD.

“Fair Market Value” means the value conclusion for real property reached according to procedures described in the DDA for Development Parcels in the 28-Acre Site and by a proprietary appraisal for Parcel K North, in each case expressed as the price that a prospective buyer with reasonable knowledge of the relevant facts would be willing to pay on the open market for fee title or the leasehold interest that the Port will convey.

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

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

- (i) Public Spaces in the FC Project Area;
- (ii) Public ROWs in the FC Project Area;
- (iii) Shoreline Improvements in and adjacent to the FC Project Area.

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

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

“FEMA” is an acronym for the Federal Emergency Management Agency.

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

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

“Final Affordable Percentage” is defined in **AHP § 2.1** (Final Affordable Percentage).

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

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

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

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

“Final EIR” means the environmental impact report for the SUD Project that the Planning Department certified on August 24, 2017.

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

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

“Final Phase” means the last Phase of development under the Phasing Plan.

“Final Port Report” means the Port’s final financial report for the 28-Acre Site Project as described in **FP § 9** (Reporting).

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

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

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

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

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

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

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

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

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

- (i) domestic or international events disrupting civil activities, such as war, acts of terrorism, insurrection, acts of the public enemy, and riots;
- (ii) acts of nature, including floods, earthquakes, unusually severe weather, and resulting fires and casualties;
- (iii) epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions;
- (iv) inability to secure necessary labor, materials, or tools (but only if the Party claiming delay has taken reasonable action to obtain them on a timely basis) due

to any of the above events, freight embargoes, lack of transportation, or failure or delay in delivery of utilities serving the 28-Acre Site;

- (v) government action or inaction after the Reference Date that precludes or substantially increases Developer's cost to perform or comply with any provision of the DDA;
- (vi) litigation that enjoins construction or other work on any portion of the 28-Acre Site, causes a lender to refuse to fund a draw request or to accelerate payment on a loan, or prevents or suspends construction work on the 28-Acre Site except to the extent caused by the Party claiming an extension;
- (vii) Administrative Delay;
- (viii) Environmental Delay; and
- (ix) Down Market Delay.

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

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

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

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

"Future Approval" means any Regulatory Approval required after the Reference Date to implement the 28-Acre Site Project or begin Site Preparation or construction of Improvements.

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

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

"GAAP" is used to mean generally accepted accounting principles consistently applied.

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

"General Plan Consistency Findings" means findings made by the Planning Commission [Add specifics] that the 28-Acre Site Project as a whole and in its entirety is consistent with the objectives, policies, general land uses, and programs specified in the General Plan and the planning principles in Planning Code section 101.1.

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

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

"Gross Tax Increment" means 100% of the revenue produced by application of the 1% ad valorem tax against the increase in assessed value above the aggregate Baseline Assessed Values of the Taxable Parcels in any portion of any financing district authorized to use Tax Increment or Housing Tax Increment, including all real property and possessory interest taxes, whether collected on the regular or supplemental tax roll.

"Ground Lease Quitclaim Deed" means a deed in the form attached as an exhibit to each Parcel Lease by which the applicable Vertical Developer disavows any right or interest in an Option Parcel subject to a Parcel Lease, which the Port may record in the Official Records after the Parcel Lease expires or is terminated.

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

“**Guarantor**” means a person meeting the Guarantor Net Worth Requirement or otherwise approved by the Port Director that executes and delivers a Guaranty to the Port

“**Guarantor Net Worth Requirement**” means a Net Worth on the date of determination of at least \$27.5 million, increased by 10% on every fifth anniversary of the Reference Date.

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

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

“**Hard Cost**” means the reasonable and customary out-of-pocket costs actually incurred and paid after the Reference Date in connection with Horizontal Improvements, including:

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

“**Hard Cost**” *excludes*:

- (1) *Soft Costs; and*
- (2) *costs incurred before the Reference Date.*

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

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

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

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

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

“**Historic Building Account**” means the segregated account within the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, hold, and disburse Historic Building Tax Increment.

“**Historic Building Costs**” means, calculated separately for Historic Building 12 and Historic Building 21, (i) all reasonable and customary costs of rehabilitation (which, for Building 12 shall include build-out to a warm shell for Floors 1 and 3 and build-out to a turnkey condition for Floor 2), and (ii) 10% developer profit on rehabilitation costs, as referenced under **FP § 11.1** (Subsidy for Historic Buildings 12 and 21).

“**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).

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

“**Historic Pier 70 Premises**” means the property that the Port has leased to Historic Pier 70, LLC.

“**Historic Tax Credits**” means tax credits received under the Historic Preservation Tax Incentives Program jointly administered by the National Park Service and the State Historic Preservation Office, codified at Tax Code section 47.

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

“**Hoedown Yard CFD**” means the CFD that the City has agreed to establish over the Hoedown Yard. Although the CFD number may change depending on the timing of the formation, the name of the Hoedown Yard CFD shall be “City and County of San Francisco Special Tax District No. 2017-1 (Illinois Street)”.

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

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

“**Hoedown Yard Facilities Special Taxes**” means Facilities Special Taxes from the Hoedown Yard that are allocated to the Hoedown Yard Facilities CFD.

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

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

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

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

“Horizontal Development Costs” means the Hard Costs and Soft Costs of Horizontal Improvements listed in **AA Exh A** (Horizontal Improvements).

“Horizontal Development Costs” exclude:

- (1) *any claimed costs that are not verified by proof of payment;*
- (2) *the portion of any cost that is commercially unreasonable as of the date incurred;*
- (3) *Vertical Phase Costs [NOT DEFINED];*
- (4) *costs to rehabilitate Historic Building 2, Historic Building 12, and Historic Building 21 for reuse;*
- (5) *costs to build the Arts Building; and*
- (6) *costs of Vertical Improvements.*

“Horizontal Improvements” means capital facilities and infrastructure built or installed in or to serve the FC Project Area or other public purposes, including Site Preparation, Shoreline Improvements, Public Spaces, Public ROWs, Utility Infrastructure and Deferred Infrastructure.

“Horizontal Improvements” excludes Vertical Improvements.

“Horizontal Phase Costs” means, on the date of determination, the amount of Developer Capital spent on Phase Improvements that is allocated to horizontal development under **FP § 2.4** (Horizontal Development Costs).

“household” means one or more related or unrelated individuals who live together in a Residential Unit as their primary dwelling.

“Household Size” means the number of persons in a household occupying a Residential Unit. MOHCD shall establish minimum Household Size requirements for BMR and Inclusionary Unit occupancy eligibility.

“Housing Impact Fees” means the 28-Acre Site Affordable Housing Fees and the 28-Acre Site Jobs/Housing Equivalency Fees collected from development on the 28-Acre Site.

“Housing Map” means **AHP Attachment A**.

“Housing Tax Increment” means Tax Increment from the IRFD.

“Housing Tax Increment Bonds” means any Bonds of the IRFD, including obligations incurred under a Pledge Agreement, secured and payable by a pledge of or otherwise payable from Housing Tax Increment.

“Housing Tax Increment Bonds” excludes Mello-Roos Bonds and Tax Increment Bonds.

“HUD” means the United States Department of Housing and Urban Development.

“Hybrid Lease” means a Parcel Lease of an Option Parcel under which the Developer Share of the Interim Satisfaction Balance is paid as Prepaid Rent and the Port Share is paid as Annual Ground Rent under **FP § 3.7(b)** (Hybrid Lease).

“ICA” is an acronym for “interagency cooperation agreement” that refers to the Memorandum of Understanding (Interagency Cooperation).

“IFD” is an acronym for Infrastructure Financing District No. 2 (Port of San Francisco), formed by Ordinance No. 27-16.

“IFD Administrative Costs” means the reasonable costs that the Port, as IFD Agent, actually incurs and pays for:

- (i) services of any Indenture Trustee (including its counsel) for any Bonds that the IFD issues or the City issues on behalf of the IFD;
- (ii) marketing or remarketing Bonds; and
- (iii) all other administrative services provided by the Port, the IFD Administrator, the City, the Special Fund Trustee, and third-party professionals necessary for the Port to perform its duties under the DDA, Tax Allocation MOU, Special Fund Administration Agreement, and Appendix G-2, including the City’s costs under section 53369.5 of the IFD Law.

“IFD Administrator” means the tax increment consultant or any other person that the Port Director designates to administer Tax Increment from Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4 of Project Area G in accordance with Appendix G-2.

“IFD Agent” means the Port, acting on behalf of the IFD with respect to the Sub-Project Areas, as authorized by Ordinance No. XXXX.

“IFD Cap” means the maximum dollar amount of Tax Increment from each Sub-Project Area that the City agreed to allocate to Project Area G.

“IFD Financing Plan” means the infrastructure financing plan for the IFD Project Area, including all appendices implementing project-specific infrastructure financing plans for sub-project areas.

“IFD Formation Proceedings” means Ordinance No. XXXX [approving Appendices] and Board of Supervisors Resolution Nos. XXXX [approving the DDA, approving the Tax Allocation MOU, etc.] forming Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4.

“IFD Law” means California law governing infrastructure financing districts, beginning at Government Code section 53395, as amended from time to time.

“IFD Project Area” means any designated project area within the IFD, including all Sub-Project Areas and Taxable Parcels in the 28-Acre Site.

“IFD Termination Date” means the respective dates on which all allocations to the IFD of Tax Increment from each Sub-Project Area and the IFD’s authority to repay indebtedness with Tax Increment from each Sub-Project Area end under Appendix G-2.

“Illinois Street Parcels” means the 20th/Illinois Parcel and the Hoedown Yard in their current ownership and configuration and as they may later be conveyed and reconfigured substantially as shown in the Land Use Plan (designated as Parcel K North, Parcel K South, HDY1, HDY2, and HDY3 on the Reference Date).

“Impact Fee” means any fee that the City imposes as a condition of approval to mitigate the impacts of increased demand for public services, facilities, or housing caused by the development project that may or may not be an impact fee governed by the Mitigation Fee Act, including in-lieu fees.

“Impact Fee” excludes any Administrative Fee, school district fee, or federal, state, or regional fee, tax, special tax, or assessment.

“Improvement Bonds” means adequate security that Developer will be required to provide Public Works in connection with the subdivision of the 28-Acre Site.

“Improvement Plans” means drawings and other documents for Horizontal Improvements that Developer (or Vertical Developers, if applicable) submit for approval in accordance with the ICA.

“Improvement Special Taxes” means all categories of Mello-Roos Taxes that the City levies in a City Fiscal Year on Taxable Parcels and Residential Units in a CFD to finance eligible Improvements authorized through CFD Formation Proceedings, which includes (i) for the Pier 70 Leased Property CFD, Facilities Special Taxes, Shoreline Special Taxes, and Arts Building Special Taxes, (ii) for the Pier 70 Condo CFD, Facilities Special Taxes and Arts Building Special Taxes, and (iii) for the Hoedown Yard CFD, Facilities Special Taxes.

“Improvements” means all physical changes required or permitted to be made to or in the vicinity of the FC Project Area and the Illinois Street Parcels under the DDA, including Horizontal Improvements and Vertical Improvements.

“Inclusionary Obligation” is defined in **AHP § 6.1(a)** (Development).

“Inclusionary Units” has the meaning given such term in the Affordable Housing Plan.

“Indemnified Party” means, as applicable, a City Party or Developer Party with the right to indemnification by an Indemnitor under the DDA.

“indemnify” means reimburse, indemnify, defend, and hold harmless.

“Indemnitor” means, as applicable, a City Party or a Developer Party with an indemnification obligation under the DDA.

“Indenture” means one or more indentures, trust agreements, fiscal agent agreements, financing agreements, or other documents containing the terms of any Bonds secured and payable by a pledge of and to be paid by any combination of Mello-Roos Taxes and Project Tax Increment.

“Indenture Trustee” means the fiscal agent or trustee under an Indenture.

“individual” when referring to a person means a human.

“Infrastructure Plan” means the Infrastructure Plan attached as **DDA Exh B1**, including the Streetscape Master Plan and each Master Utility Plan when later approved by the applicable City Agency.

“Initial Summary Proforma” means the Summary Proforma attached as **FP Sch 1** to the Financing Plan.

“Initial Transition Notice” means the written notice prepared by the Port, with Developer’s cooperation and consultation, that will provide the Noonan Tenants with a minimum of 6 and up to 24 months’ prior written notice of the termination of their respective lease at the Noonan Building, with an opportunity to relocate to the Temporary Noonan Replacement Space upon termination.

“in-lieu fee” means a fee a developer may pay instead of complying with an Exaction.

“Insolvency” means a person’s financial condition that results in any of the following:

- (i) a receiver is appointed for some or all of the person’s assets;
- (ii) the person files a petition for bankruptcy or makes a general assignment for the benefit of its creditors;
- (iii) a court issues a writ of execution or attachment or any similar process is issued or levied against any of the person’s property or assets; or
- (iv) any other action is taken by or against the person under any bankruptcy, reorganization, moratorium or other debtor relief law.

“Inspection Request” means Developer’s written request that the Chief Harbor Engineer arrange for the applicable Acquiring Agency to inspect Horizontal Improvements or Components for compliance with Project Requirements and City Law.

“Interest Cost Limitation” means the statutory limit on the amount of interest that an infrastructure financing district is authorized to pay to acquire infrastructure under IFD Law section 53395.2, specifically, “a rate of interest not to exceed the bond buyer index rate on the day that the agreement to repay is entered into.”

“Interest on Land Proceeds” means annual rate of **XXXX%**, compounded quarterly until paid, the rate at which interest accrues on the principal amount of Promissory Note-LP and Promissory Note-X.

“Interested Person” means a person that acquires a property interest or security interest in any portion of the 28-Acre Site by a conveyance or Lender Acquisition.

“Interim Affordable Percentage” is defined in AHP § 2.2(b) (Required Interim Threshold).

“Interim Lease Revenues” means Percentage Rent generated from the Master Lease (as determined in Exhibit D attached thereto) that will be treated as Land Proceeds under the Financing Plan.

“Interim Satisfaction” means that all of the conditions specified **FP § 3.6(a)** (Interim Satisfaction) have been satisfied.

“Interim Satisfaction Balance” means any Land Proceeds available for interim revenue-sharing under **FP § 3.6** (Interim Satisfaction), subject to the Port’s rights under **FP § 3.7** (Parcel Lease Options).

“Interim Satisfaction Event” means the occurrence of Interim Satisfaction in a Phase.

“investigate” when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be released in, on, under, or about any portion of the 28-Acre Site, other Port property, or the environment, including:

- (i) preparation and publication of site history;
- (ii) sampling, and monitoring reports;
- (iii) performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks; and
- (iv) sampling and analysis of environmental conditions before, during, and after remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

“Invitee” means a person’s clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, vendors, suppliers, assignees, tenants and subtenants, any other person whose rights arise through them, and members of the general public present on any property under the person’s possession and control.

“IRFD” means City and County of San Francisco Infrastructure and Revitalization Financing District No. 2, formed by Ordinance No. **XXXX**, over the Hoedown Yard.

“IRFD Administrative Costs” means the reasonable costs that the Port, as IRFD Agent, actually incurs and pays for:

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

“IRFD Administrator” means the tax increment consultant or any other person that the Port Director designates to administer Housing Tax Increment from the IRFD in accordance with the IRFD Financing Plan.

“IRFD Agent” means the Port, acting on behalf of the IRFD, as authorized by Ordinance No. XXXX. [need an MOU with MOHCD to address AHP issues.]

“IRFD Cap” means the maximum dollar amount of Housing Tax Increment from the IRFD that the City agreed to allocate to the IRFD.

“IRFD Financing Plan” means the infrastructure financing plan for the IRFD.

“IRFD Formation Proceedings” means Ordinance No. XXXX [approving the IRFP Fin Plan] and Board of Supervisors Resolution Nos. XXXX [approving the DDA, approving the Tax Allocation MOU, etc.].

“IRFD Law” means the law governing infrastructure and revitalization financing districts, at California Government Code sections 53369-53369.49, as amended from time to time.

“IRFD Termination Date” means the date on which all allocations to the IRFD of Housing Tax Increment and the IRFD’s authority to repay indebtedness with Housing Tax Increment end under the IRFD Financing Plan.

“Irish Hill Park” means _____.

“issue” when used in reference to any form of indebtedness in the Financing Plan means to complete all actions required to obtain the proceeds for authorized uses under the Financing Plan.

“Joint Appraisal” means the appraisal report that a Qualified Appraiser delivers to both Parties under **DDA § 7.3(e)** (Joint Appraisal).

“Land Proceeds” means any of the following revenues paid in cash or by Credit Bid or both to the Port:

- (i) Interim Lease Revenues;
- (ii) Parcel K North Proceeds;
- (iii) proceeds of the sale of any Option Parcel, net of Port costs of conveyance and any offset for Deferred Infrastructure that a Vertical Developer will build;
- (iv) Prepaid Rent paid to the Port under a Prepaid Lease;
- (v) PNLP Payments to the Port under Promissory Note-LP; and
- (vi) net proceeds from the Port’s conveyance of Historic Building 12 or Historic Building 21, if positive.

“Land Proceeds” excludes:

- (1) *Prepaid Rent paid to Developer under a Hybrid Lease;*
- (2) *Annual Ground Rent paid to the Port under a Hybrid Lease;*
- (3) *net proceeds of the Port’s conveyances of Public Use Parcels; and*
- (4) *net proceeds from the Port’s conveyance of Historic Building 12 or Historic Building 21, if negative.*

“Land Proceeds Fund” means the segregated account within the Special Fund Trust Account, which will hold certain Land Proceeds as described in **FP § 2.5** (Trust Account for Special Funds).

“Land Use Plan” means the Land Use Concept Plan shown in *D4D Fig 2.1.1* and attached to the DDA as **DDA Exh A4**.

“Land Value Indicator” means dollar value per usable square foot within the building envelope assumed in the Final EIR for each Option Parcel for its proposed use, initially based on the Land Use Plan attached to the DDA and the residual land values in the Summary Proforma attached to the

Financing Plan on the Reference Date, which will be used solely for a Down Market Test under **DDA art. 4** (Excusable Delay).

“Later Phase” means any Phase for which Developer obtains Phase Approval after a Current Phase.

“law” means any of the following validly in effect as of the Reference Date and as later amended, supplemented, clarified, corrected, or replaced during the DDA Term, whether or not within the present contemplation of the Parties:

- (i) federal, state, regional, or local constitution, charter, law, statute, ordinance, code, rule of common law, resolution, rule, regulation, standard, directive, requirement, proclamation, order, decree, policy (including the Waterfront Plan and Port and City construction requirements);
- (ii) judicial order, injunction, writ, or other decision interpreting any law;
- (iii) requirement or condition of any Regulatory Approval of a Regulatory Agency affecting any portion of the 28-Acre Site; and
- (iv) recorded covenants, conditions, or restrictions affecting any portion of the 28-Acre Site.

“LBE” is an acronym for a local business enterprise as defined in Administrative Code chapter 14B.

“Leased Property Backup Fund” means the fund or account held by the Special Fund Trustee to be used exclusively to pay Special Debt Service on Mello-Roos Bonds as described in **FP § 6.5(h)** (Application of Tax Increment to Special Debt Service).

“Leased Property Backup Fund Requirement” means, at any date of calculation, the maximum debt service due in any year on all outstanding Mello-Roos Bonds secured by Facilities Special Taxes in the Pier 70 Leased Property CFD.

“Leasing Costs” means customary and usual costs incurred by a landlord with respect to leased property, such as costs associated with tenant defaults, costs of collection, vacancies, assignments and subleases, estoppel certificates, nondisturbance agreements, and Insolvency.

“Legislature” means the legislative branch of the State.

“Lender Acquisition” means a Permitted Lender or its nominee taking title to Encumbered Property under its Permitted Lien through a foreclosure proceeding, a conveyance or other action in lieu of foreclosure, or its exercise of any other power of sale or other remedy.

“License” means the contract by which the Port will grant Developer the right of entry to portions of the FC Project Area that are outside of the Master Lease Premises for construction of Horizontal Improvements, substantially in the form attached as **DDA Exhibit B11**.

“Loss” when used in reference to a Claim means any personal injury, property damage, or other loss, liability, actual damages, compensation, contribution, cost recovery, lien, obligation, interest, injury, penalty, fine, action, judgment, award, or costs (including reasonable attorneys’ fees), or reasonable costs to satisfy a final judgment of any kind, known or unknown, contingent or otherwise, except to the extent specified in the DDA.

“Loss Security” means Adequate Security that Developer is required to provide to secure the Developer Reimbursement Obligations for each Phase.

“Loss Security End Date” means the date that is the earliest to occur of the following events: (i) issuance of a SOP Compliance Determination for all Phase Improvements within the Phase; (ii) the expiration or termination of the DDA with respect to Developer; or (iii) the expiration or termination of all of Developer’s rights to develop or submit Phase Submittal applications to develop any portion of the Project Site.

“Maintained Facilities” means, as the context requires, the FC Project Area Maintained Facilities, the Hoedown Yard Maintained Facilities, or both.

“Map Act” means the Subdivision Map Act of California (Calif. Gov’t Code §§ 66410-66499.37).

“Market-Rate Condo Project” means a Market-Rate Project containing Condo Units.

“Market-Rate Parcel” means a Development Parcel other than an Affordable Housing Parcel on which development of residential use is permitted, as identified on the attached Housing Map, subject to revision in accordance with the DDA and the AHP.

“Market-Rate Project” means a Residential Parcel constructed by a Vertical Developer and containing Market-Rate Units and Inclusionary Units if required. The inclusion of other uses permitted under the SUD will not affect the designation as a Market-Rate Project.

“Market-Rate Rental Project” means a Market-Rate Project containing Rental Units.

“Market Rate Units” means any Residential Unit constructed on a Market-Rate Parcel that is not subject to affordability restrictions under the Affordable Housing Plan.

“Master CC&Rs” means Master Conditions, Covenants, and Restrictions that the Parties will approve under **DDA § 8.6** (Master CC&Rs).

“Master Lease” means a lease for most of the 28-Acre Site in the form of **DDA Exh B10** that allows Developer to take possession of the described premises and construct Horizontal Improvements on portions of the 28-Acre Site under the DDA.

“Master Lease Premises” means all of the 28-Acre Site except for the Noonan Building, property under the Port’s lease with Affordable Self-Storage, and Building 21.

“Master Tentative Map” means the Tentative Map approved for the entire 28-Acre Site.

“Master Utilities Plan” means any of the following plans for Utility Infrastructure, which will be deemed incorporated into the Infrastructure Plan when approved by the SFPUC:

- (i) Low Pressure Water Master Plan;
- (ii) Non-Potable Water System Master Plan;
- (iii) Grading and Combined Sewer System Master Plan;
- (iv) Dry Utilities Joint Trench Master Plan; and
- (v) Master Electrical Infrastructure Plan.

“Material Breach” means the occurrence of any of the events described in **DDA art. 12** (Material Breaches and Termination).

“Material Change” means any circumstance that would create a conflict between a New City Law and the Project Approvals that is described in **DA § 5.2(b)** (Circumstances Causing Conflict).

“Material Change Order” means any agreed-upon change order for construction of Phase Improvements that would exceed a \$250,000 threshold per occurrence.

“Material Modification” means an amendment to the DDA that would materially increase an Acquiring Agency’s costs of ownership or impair the operations of Horizontal Improvements, or that would materially decrease the benefits to the Port or the City, as determined by the Port Director under **DDA § 3.9(c)** (Amendment of the DDA).

“Maximum Inclusionary AMI” is defined in **AHP Subsection** Error! Reference source not found. (Development).

“Maximum Special Tax Rate” means the highest rate at which any category of Mello-Roos Taxes is authorized to be levied on a Taxable Parcel under an RMA.

“McEnerney Act” means the Destroyed Land Records Relief Law (Calif. Code of Civ. Proc. §§ 751.01-751.28).

“McEnerney action” means a lawsuit under the McEnerney Act.

“Mello-Roos Bond Account (28-Acre Site Improvement Special Taxes)” means the segregated account or accounts that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Improvement Special Taxes from the Pier 70 CFDs to pay debt service on Mello-Roos Bonds issued to finance Horizontal Improvements and other eligible Improvements.

“Mello-Roos Bond Account (28-Acre Site Tax Increment)” means the segregated account that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Tax Increment after the Project Payment Obligation is satisfied and Promissory Note-LP has been paid in full to pay debt service on Mello-Roos Bonds issued to finance eligible Improvements at the 28-Acre Site.

“Mello-Roos Bond Account (Housing Tax Increment)” means the segregated account that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Housing Tax Increment from the IRFD to pay debt service on Mello-Roos Bonds issued to finance 100% affordable housing projects within the AHP Housing Area.

“Mello-Roos Bond Account (Port Tax Increment)” means the segregated account that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Port Tax Increment to pay debt service on Mello-Roos Bonds issued to finance Port Improvements and other eligible Improvements at Pier 70.

“Mello-Roos Bond Account (Project Tax Increment)” means the segregated account within the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Project Tax Increment to pay debt service on Mello-Roos Bonds issued to finance Horizontal Improvements and other eligible Improvements at the 28-Acre Site.

“Mello-Roos Bond Proceeds” means the proceeds of Mello-Roos Bonds.

“Mello-Roos Bonds” means one or more series of taxable or tax-exempt bonds, including refunding bonds, or any other debt (as defined in CFD Law) that the City issues for a Facilities CFD, secured and payable by a pledge of Improvement Special Taxes, Allocated Tax Increment, Allocated Housing Tax Increment, or any combination thereof for any purpose authorized under Governing Law and Policy.

“Mello-Roos Improvement Fund” means the funds or accounts, however denominated, that an Indenture Trustee establishes to hold, administer, and disburse Mello-Roos Bond Proceeds to be used to finance Horizontal Development Costs, Shoreline Protection Facilities, or for any other purpose authorized under the Financing Plan and the applicable Indenture.

“Mello-Roos-only Bonds” means Mello-Roos Bonds that are secured only by Improvement Special Taxes. Bonds with debt service that are paid by Tax Increment are not Mello-Roos-only Bonds.

“Mello-Roos Taxes” means special taxes that the City levies in a City Fiscal Year on Taxable Parcels in any CFD in accordance with the applicable RMA, including delinquent special taxes collected at any time by payment or through foreclosure.

“Memorandum of Understanding (Assessment, Levy, and Allocation of Taxes)” is an interagency agreement between the City, through the Assessor, the Controller, and the Treasurer-Tax Collector, and the Port establishing procedures for assessing Taxable Parcels, levying Mello-Roos Taxes, allocating Mello-Roos Taxes to each CFD, allocating Tax Increment to the IFD, allocating Housing Tax Increment to the IRFD, and related matters, as authorized by Port Resolution No. XXXX, the MOU Resolution and Board of Supervisors Resolution No. XXXX under Charter section B7.340.

“Memorandum of Understanding (Interagency Cooperation)” is an interagency agreement between the City, through the Mayor, the Controller, the City Administrator, and the Director of Public Works, with the Consents of SFMTA and SFPUC, and the Port, establishing procedures for interagency cooperation in City Agency review and approval of Construction Documents, inspection of Horizontal Improvements, and related matters, as authorized by Port Resolution No. XXXX and the MOU Resolution and Board of Supervisors Resolution No. XXXX under Charter section B7.340.

“Mezzanine Loan” means a loan secured by a pledge of equity interests in Developer, subject to **DDA § 18** (Lender’s Rights).

“Mezzanine Lender” is an entity that makes a Mezzanine Loan to a direct or indirect owner of Borrower, subject to **DDA § 18.2** (Mezzanine Financing).

“Michigan Street segment” means the portion of Michigan Street located in the SUD.

“Minimum Bid Price” means the minimum price that the Port will accept in a Public Offering for an Option Parcel under **DDA § 7.4(b)** (Public Offering Procedures).

“Mitigation Fee Act” means California Government Code sections 66000-66025.

“Mitigation Measure” means any measure identified in the MMRP required to minimize or eliminate material adverse environmental impacts of the 28-Acre Site Project and any additional measures necessary to mitigate adverse environmental impacts that are identified through the CEQA process for any Future Approval.

“MMRP” is an acronym for the Mitigation Monitoring and Reporting Program that the Planning Commission adopted by Motion No. 19977 and that the Port Commission adopted by Resolution No. 17-43.

“MOHCD” is an acronym for the Mayor’s Office of Housing and Community Development.

“MOHCD Manual” is defined in **AHP § 6.1(c)** (Procedures for Monitoring and Enforcement).

“MOU Resolution” is a term for Board of Supervisors Resolution No. XXXX, approving under Charter section B7.340 the Tax Allocation MOU and the Port’s designation as the City’s agent for the term of the Tax Allocation MOU for:

- (i) the Facilities CFD and the Services CFD for the Pier 70 CFDs;
- (ii) the Services CFD for the 20th Street CFD;
- (iii) the Facilities CFD and the Services CFD for the Hoedown Yard CFD;
- (iv) Sub-Project Areas G-2, G-3, and G-4;
- (v) the IRFD;
- (vi) the administration of Mello-Roos Taxes and any proceeds of Bonds secured and payable by Mello-Roos Taxes;
- (vii) the administration of Allocated Housing Tax Increment and any proceeds of Bonds secured and payable by Housing Tax Increment; and
- (viii) the administration of Allocated Tax Increment and any proceeds of Bonds secured and payable by Tax Increment.

“Muni” means the municipal public transit systems operated by SFMTA.

“Municipal Code” means, collectively, the Charter and ordinances adopted by the Board of Supervisors and by San Francisco voters through initiatives.

“MUP” is an acronym for Master Utilities Plan.

“net present value” means the difference between the present value of the future cash flows from an investment, calculated by discounting the future cash flows at the required rate of return, and the amount of investment.

“Net Worth” when used in reference to a Transfer means the equity of an entity’s owners (e.g., equity interest of shareholders of a corporation or members of a limited liability company) calculated in accordance with GAAP or income tax basis of accounting consistently applied.

“Net Worth Requirement” when used in reference to a Transfer means, for each Transferred Phase in which Phase Improvements are not complete, a Net Worth of at least \$27.5 million, increased automatically by 10% on each fifth anniversary of the Reference Date for the remainder of the DDA Term, unless otherwise approved by the Port Director.

“New City Law” means a substantive change to an Existing City Law or a new ordinance, rule, regulation, plan, or policy adopted after the Reference Date by a City Agency or by voter initiative.

“New City Law” excludes regulations, plans, and policies that change only procedural requirements of an Existing City Law.

“NOI Property” means any Commercial Parcel or Market-Rate Rental Project in the 28-Acre Site.

“NOI Property Project Tax Increment” means the Project Tax Increment derived from any NOI Property.

“Nonreimbursable Mello-Roos Bonds Debt Service” when used in reference to any outstanding Mello-Roos Bonds that are secured in any part by a pledge of Project Tax Increment means debt service for the relevant period on the portion of the proceeds that was used to finance, or is expected to finance, Improvements outside of and not of primary benefit to Sub-Project Areas G-2, G-3, and G-4 in the amount that the Port determines to be allocable to those Improvements.

“Nonreimbursable Tax Increment Debt Service” when used in reference to any outstanding Tax Increment Bonds that are secured in any part by a pledge of Project Tax Increment means debt service for the relevant period on the portion of the proceeds that was used to finance, or is expected to finance, Improvements outside of and not of primary benefit to Sub-Project Areas G-2, G-3, and G-4 in the amount that the Port determines to be allocable to those Improvements.

“nontrust revenues” means the Port’s revenues from leases or other agreements for Development Parcels from which the public trust use restrictions have been lifted by the Public Trust Exchange authorized under AB 418 and 28-Acre Site Project-based revenues outside of the Port Harbor Fund that are available for the 28-Acre Site Project, such Mello-Roos Taxes, Tax Increment, and proceeds of Bonds secured and payable by either or both, credits that may be applied to offset any portion of Impact Fees or Exactions that would otherwise be due, and proceeds of general obligation bonds.

“Noonan Building” means the structure in Pier 70 also identified as Building 11.

“Noonan Replacement Space” means space within a new or rehabilitated building in the 28-Acre Site Project for which the Port has issued a temporary certificate of occupancy that meets the requirements of **DDA Section 7.14** that will house the Noonan Tenants.

“Noonan Space Parcel Lease” means the Parcel Lease for the building in which the Noonan Replacement Space will be located, as described in **DDA § 7.13** (Noonan Replacement Space).

“Noonan Tenant” means a named tenant or Port-approved subtenant under a lease with the Port for space in the Noonan Building that is in effect and in good standing as of the date of the Initial Transition Notice or Second Transition Notice, as applicable.

“Noonan Tenant Rent” means the base rent for the Noonan Replacement Space determined in accordance with **DDA Section 7.14(a)(iv)**.

“**notice**” means a written notification, demand, request for information or consent, or response to a request delivered in accordance with **App ¶ A.5** (Notices).

“**Notice of Special Tax Lien**” means _____.

“**Notice of Termination**” means a notice given under **DDA § 12.7** (Termination Procedures).

“**Obligor**” means the person contractually obligated to perform under any form of Adequate Security provided under **DDA art. 17** (Security for Project Activities).

“**Obligor Net Worth**” when used in reference to an issuer of Adequate Security means a person’s net worth calculated in accordance with GAAP, and more specifically for a corporation, shareholder equity.

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

“**OEWD**” is an acronym for the Office of Economic and Workforce Development.

“**Office Development Authorization**” means a Planning Commission approval of an application for a large office application under the Planning Code.

“**Official Records**” means official real estate records that the Assessor records and maintains.

“**OLSE**” is an acronym for the Office of Labor Standards Enforcement of the San Francisco Department of Administrative Services.

“**Ongoing Maintenance Costs**” means maintenance and capital repair and replacement costs of Maintained Facilities that will be paid by Services Special Taxes, including:

- (i) landscaping and irrigation systems and other equipment, material, and supplies directly related to maintaining and replacing landscaped areas and water features;
- (ii) maintenance and replacement as needed of Public Spaces and Public ROWs, including street cleaning and paving (but not street reconstruction);
- (iii) lighting, rest rooms, trash receptacles, park benches, planting containers, picnic tables, and other furniture and fixtures and signage;
- (iv) utilities;
- (v) insurance;
- (vi) security;
- (vii) replacement reserves; and
- (viii) Port, City, or third party personnel, administrative, and overhead costs related to maintenance or to contracting for and managing third-party maintenance.

“**Option**” means development rights granted to Developer for Option Parcels under the DDA.

“**Option Exercise Deadline**” means the 30th day after delivery of any Final Appraisal, which is the last day Developer may deliver notice of its exercise of the Option on an Option Parcel to the Port under **DDA § 7.4(a)** (Option Exercise Deadline).

“**Option Parcel**” means a Development Parcel for which Developer has an Option under **DDA art. 7** (Parcel Conveyances), which Developer will exercise through a Vertical Developer Affiliate.

“**Other Acquiring Agency**” means an Acquiring Agency other than the Port.

“**Other City Agency**” means a City Agency other than the Port.

“Other City Costs” means costs that Other City Agencies incur to perform their obligations under the ICA, the Development Agreement, and the Tax Allocation MOU to implement or defend actions arising from the 28-Acre Site Project, including staff costs determined on a time and materials basis, third-party consultant fees, attorneys’ fees, and costs to administer the financing districts to the extent not paid by Public Financing Sources.

“Other City Costs” excludes *Port Costs, Administrative Fees, Impact Fees, and Exactions.*

“Other City Requirements” means ordinances and policies described in **DDA Exh D9** and approved plans to implement City and Port ordinances and policies, including those attached to the DDA at **DDA Exh Tab B**.

“Other Regulator” means a federal, state, or regional body, administrative agency, commission, court, or other governmental or quasi-governmental organization with regulatory authority over Port land, including any Environmental Regulatory Agency.

“Outside Date” means the last date by which Developer must perform identified obligations for the 28-Acre Site Project, as specified in the Schedule of Performance.

“Parcel” refers to a specific Development Parcel within the SUD when used with a modifier corresponding to the Land Use Plan.

“Parcel K North” means the northerly parcel that the Port intends to create by subdividing the 20th/Illinois Parcel as shown on **DDA Exh A3** (Land Use Plan).

“Parcel K North Maintained Facilities” means the Horizontal Improvements that will be operated and maintained using Services Special Taxes from Zone 1 of the Pier 70 Condo CFD.

“Parcel K North Proceeds” means the funds available for disbursement according to the Port’s escrow instructions at the Close of Escrow for its sale of Parcel K North.

“Parcel K South” mean the southerly parcel that the Port intends to create by subdividing the 20th/Illinois Parcel as shown in **DDA Sch 4 (Anticipated Configuration of Parcel K North and Parcel K South)**.

“Parcel Lease” means a contract in the form of **DDA Exh D2** by which the Port will convey a leasehold interest in an Option Parcel to a Vertical Developer.

“Parcel Lease Election” means the Port’s right to elect to convey an Option Parcel in a Current Phase by a Hybrid Lease under **FP § 3.7** (Parcel Lease Options).

“Park Parcel” means any of the Park Parcels identified in the Land Use Plan as Parcel OS1, Parcel SC1, Parcel SC2, Parcel WP1, Parcel WTP, or Parcel WP2.

“Party” means, individually or collectively as the context requires, Developer, Port, City, and any Transferee that is made a Party to the DDA under the terms of an Assignment and Assumption Agreement approved by the Port Director.

“Party Appraisal” means the appraisal report that a Party obtains under **DDA § 7.3(f)** (Appraisal Disputes).

“Payment Request” means Developer’s request to the Port in the form of **AA Exh C** for payment under the Acquisition Agreement.

“PBC” is an acronym for the Port Building Code.

“PCBs” is an acronym for polychlorinated biphenyls.

“PDR” means Industrial/Production, Distribution, Repair.

“PDR Requirement” means Developer’s obligation to provide at least 50,000 gsf of space in the 28-Acre Site that is restricted for PDR use in accordance with **DDA § 7.15** (PDR).

“Pending Projects” for purposes of **DDA Exh A5** means:

- (i) office development projects for which large office allocation applications (50,000 gsf or more) have been submitted to the Planning Department that have not received Planning Commission approval by the end of the Allocation Period; plus
- (ii) additional office space that is located in structures owned or otherwise under the jurisdiction of the State, the federal government, or any state, federal, or regional government agency that is exempt from Prop M and has been fully approved and for which occupancy is reasonably anticipated to occur during the Allocation Period; plus
- (iii) new office development projects on Port land outside of the 28-Acre Site for 50,000 gsf or more for which the Port and the applicable project sponsors have entered into conveyance agreements that would allow construction, but that have not received Port Construction Permits by the end of the Allocation Period.

“Percentage Rent” is defined in the Master Lease as 100% of Net Income generated at or from the Premises (as those terms are defined in Exhibit D to the Master Lease).

“Permanent Noonan Replacement Space” means the permanent transition space provided for the Noonan Tenants that will likely be located on the site of Parcel E4.

“Permanent Transition Notice” means the notice that the Temporary Noonan Landlord provides to Noonan Tenants regarding relocation to the Noonan Replacement Space and termination of their existing subtenancies under **DDA § 7.14** (Noonan Replacement Space).

“Permit Set” means the final submittal of Improvement Plans under **DDA § 13.2(a)** (Preparation of Improvement Plans).

“Permitted Exceptions” means exceptions to title that Developer has marked as “approved” on the Preliminary Title Report for the Master Lease Premises or new title exceptions approved by Developer as more particularly described in **DDA § 8.1(c)** (Delivery of Master Lease) and **DDA § 8.3**.

“Permitted Lender” means a Bona Fide Institutional Lender or a Mezzanine Lender that makes a Permitted Loan.

“Permitted Lien” means a deed of trust or other security instrument, given to secure a Borrower’s repayment obligation to a Permitted Lender, that encumbers:

- (i) a real property interest in the FC Project Area (including Borrower’s Option rights under this Agreement); or
- (ii) Borrower’s ownership interests in Developer and/or the right to receive Project Payment Sources and the Developer Share of the Interim Satisfaction Balance and Project Surplus during the course of horizontal development or as later payable on Promissory Note-LP; or
- (iii) both.

“Permitted Loan” means a construction loan or Mezzanine Loan that a Permitted Lender makes to fund Developer Construction Obligations for the 28-Acre Site Project, secured by a Permitted Lien.

“person” means any individual, corporation (including any business trust), limited liability entity, partnership, trust, joint venture, or any other entity or association, or governmental or other political subdivision or agency.

“personal injury” means any physical or emotional trauma or injury to or death of any individual.

“PG&E” means Pacific Gas & Electric Company.

“Phase” means one of the integrated stages of horizontal and vertical development for the 28-Acre Site as shown in the Phasing Plan, subject to revision under **DDA art 3** (Phase Approval).

“Phase 1” means the first Phase of development under the Phasing Plan.

“Phase Account” means a bookkeeping account for any Phase as described in **DDA § 20.1(a)** (Phase Accounts).

“Phase Approval” means the Port’s approval of a Phase Submittal in accordance with the procedures of **DDA § 3.2**.

“Phase Area” means the Development Parcels and other land at the 28-Acre Site that are to be developed in a Phase.

“Phase Audit” means Developer’s final financial report for a Phase as described in **FP § 9.3(a)** (Phase Audit).

“Phase Audit Date” means the due date for each Phase Audit under **FP § 9.3(a)** (Phase Audit).

“Phase Budget” means the Summary Proforma for a Phase that is submitted and updated under **DDA art 3** (Phase Approval).

“Phase Closing Date” means the date on which the Port accepts a Phase Audit under **FP § 9.3(a)** (Phase Audit).

“Phase Developer Balance” means, separately for each Phase, the sum of Developer’s unreimbursed Entitlement Sum, Horizontal Development Costs from the Current Phase, plus related accrued and unpaid Developer Return on the Entitlement Sum and the Horizontal Development Costs, as shown on the Phase Developer Capital Schedule.

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

“Phase Developer Capital Schedule” means an accounting schedule that Developer maintains that shows (i) the expenditures and reimbursements of Developer Capital for each Phase of the 28-Acre Site Project and (ii) accrued and unpaid Developer Return, for each Phase of the 28-Acre Site Project, which will be used to determine the Phase Developer Balance at any given time.

“Phase Improvement Costs” means Horizontal Development Costs of Phase Improvements.

“Phase Improvements” means Horizontal Improvements that are to be constructed in a Phase, including Deferred Infrastructure.

“Phase Port Balance” means, separately for each Phase, the sum of any unreimbursed Port Capital Advances for Horizontal Development Costs in a Current Phase and related accrued and unpaid Return on Port Capital, as shown on the Phase Port Capital Schedule.

“Phase Port Capital Schedule” means an accounting schedule that the Port maintains that shows (i) the expenditures and reimbursements of Port Capital for each Phase of the 28-Acre Site Project and (ii) accrued and unpaid Interest on Port Capital for each Phase of the 28-Acre Site Project, which will be used to determine the Phase Port Balance at any given time.

“Phase Quitclaim Deed” means a deed in the form attached as an exhibit to the Master Lease by which Developer disavows any real property interest in any part of a Phase Area under the Master Lease, which the Port will be entitled to record in the Official Records after issuing a Determination of Completion for the Phase.

“Phase Satisfaction” means the time when the Phase Developer Balance on the Phase Developer Capital Schedule for the Current Phase and the Phase Port Balance on the Phase Port Capital Schedule for the Current Phase have been satisfied in full.

“Phase Security” means Adequate Security for the obligations to be secured under **DDA art. 17.3** (Security for Project Activities).

“Phase Submittal” means Developer’s application for Port Commission approval of a proposed Phase under **DDA art. 3** (Phase Approval).

“Phased Final Map” means a Final Map for a Phase Area.

“Phasing Goals” means measures and objectives described in **DDA § 2.4** (Phasing Goals) to which the Parties have agreed to achieve their mutual goal of an economically feasible project that balances competing policy interests.

“Phasing Plan” means **DDA Exh A4**, which shows the order of development of the Phases and the Development Parcels in each Phase Area, subject to revision under **DDA art. 3** (Phase Approval).

“Pier 70” is a designation for approximately 72 acres of Port-owned land in the central waterfront area of San Francisco.

“Pier 70 CFD Facilities Account” means the segregated account or accounts within the Facilities Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Improvement Special Taxes from Taxable Parcels in either or both of the Pier 70 CFDs.

“Pier 70 CFD Proceeds” means Improvement Special Taxes and proceeds of Bonds secured by Improvement Special Taxes from Taxable Parcels in either or both of the Pier 70 CFDs.

“Pier 70 CFDs” refers collectively to the Pier 70 Leased Property CFD and the Pier 70 Condo CFD.

“Pier 70 Condo CFD” means the CFD that will include Parcel K North and all Option Parcels in the 28-Acre Site that the Port sells for development as Residential Condo Projects. Although the CFD number may change depending on the timing of the formation, the name of the Pier 70 Condo CFD shall be “City and County of San Francisco Special Tax District No. 2017-2 (Pier 70 28-Acre Site/Condominiums)”.

“Pier 70 Condo CFD Proceeds” means Improvement Special Taxes and proceeds of Bonds secured by Improvement Special Taxes from Taxable Parcels in the Pier 70 Condo CFD.

“Pier 70 Condo CFD Services Account” means the segregated account within the Services Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Services Special Taxes from Taxable Parcels in the Pier 70 Condo CFD.

“Pier 70 Facilities Special Taxes” means the Facilities Special Taxes that are levied in the Pier 70 CFDs.

“Pier 70 IFDs” refers collectively to Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4.

“Pier 70 Leased Property” means Development Parcels in the 28-Acre Site that the Port will convey by Parcel Leases for development as Market-Rate Rental Projects and Taxable Commercial Parcels.

“Pier 70 Leased Property CFD” means the CFD that will include all Option Parcels in the 28-Acre Site that the Port will convey by Parcel Lease for development as Market-Rate Rental Projects and Taxable Commercial Parcels. Although the CFD number may change depending on the timing of the formation, the name of the Pier 70 Leased Property CFD shall be “City and County of San Francisco Special Tax District No. 2017-3 (Pier 70 28-Acre Site/Leased Properties)”.

“Pier 70 Leased Property CFD Proceeds” means Improvement Special Taxes and proceeds of Bonds secured by Improvement Special Taxes from Taxable Parcels in the Pier 70 Leased Property CFD.

“Pier 70 Leased Property Services Account” means the segregated account within the Services Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Services Special Taxes from Taxable Parcels in the Pier 70 Leased Property CFD.

“Pier 70 Master Plan” means the Pier 70 Preferred Master Plan that the Port Commission endorsed by Resolution No. 10-27.

“Pier 70 Shoreline Protection Facilities” means future waterfront Improvements to protect the shoreline east of Pier 70 from perils associated with seismic events and climate change, including sea level rise and floods, and other public improvements approved by the Port Commission and the Board of Supervisors.

“Planning” means the San Francisco Planning Commission, acting by motion or resolution or by delegation of its authority to the Planning Department and the Planning Director.

“Planning Commission” means the San Francisco Planning Commission.

“Planning Department” means staff of the City’s Planning Department.

“Planning Director” means the City’s Director of Planning.

“Pledge Agreement” means (i) a pledge of Project Tax Increment, Port Tax Increment, or both, to Mello-Roos Bonds under a pledge agreement between the Port, as IFD Agent, CFD Agent, or both, and the Indenture Trustee for the Mello-Roos Bonds and/or (ii) a pledge of Housing Tax Increment, Port Tax Increment, or both, to Bonds under a pledge agreement between the Port, as IRFD Agent and the Indenture Trustee for the Bonds.

“PNLP Payments” means Pier 70 CFD Proceeds that are deposited into the Land Proceeds Fund of the Special Fund Trust Account.

“Port” means the San Francisco Port Commission.

“Port Account” means the segregated account within the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, hold, and disburse Port Tax Increment.

“Port Audit” means a financial review performed by a CPA on behalf of the Port under **FP § 9.4(a)** (Port Audit).

“Port Balance” means, on the date of determination, the sum of any unreimbursed Port Capital Advances for Horizontal Development Costs in a Current Phase and related accrued and unpaid Return on Port Capital, including any carryover of Port Capital Advances for Horizontal Development Costs from a Prior Phase.

“Port Balance” excludes any Port Capital Advance and related Return on Port Capital for Horizontal Development Costs in a Later Phase.

“Port Capital” means Port harbor revenues that used to fund Horizontal Development Costs, excluding Land Proceeds and Project Payment Sources.

“Port Capital Advance” means a Port loan of Port Capital to the Pier 70 CFDs to pay for Horizontal Development Costs.

“Port Capital Advance Fund” means the segregated account that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Port Capital Advances.

“Port Capital Plan” means the Port’s most recent 10-year capital plan as adopted or amended by the Board of Supervisors under Administrative Code sections 3.20-3.21.

“Port Capital Schedule” means an accounting schedule that the Port maintains that shows (i) the expenditures and reimbursements of Port Capital and (ii) accrued and unpaid Interest on Port Capital, for all Phases of the 28-Acre Site Project individually and in the aggregate for the Port Balance.

“Port Consent” means the Consent to Development Agreement signed by the Port Director as authorized by Port Commission Resolution No. **XXXX**.

“Port Costs” means costs that the Port incurs to perform its obligations to Developer and otherwise implement the DDA, including staff costs on a time and materials basis, third-party costs, and costs to administer the CFDs, Sub-Project Area G-2, and the IRFD to the extent not paid by Public Financing Sources.

“Port Costs” excludes *Other City Costs, Advances of Land Proceeds, and Port Capital Advances.*

“Port Director” means the Executive Director of the Port.

“Port Finance Director” means the Port’s Deputy Director, Finance and Administration.

“Port Harbor Fund” means the harbor trust fund that the Port must maintain in compliance with section 4 of the Burton Act, AB 418, the Agreement Regarding the Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco, and Charter section B6.406.

“Port Harbor Revenues” means funds that the Port is entitled to deposit into the Port Harbor Fund without any restrictions under the Financing Plan.

“Port IFD Guidelines” means the *Guidelines for the Establishment and Use of an Infrastructure Financing District with Project Areas on Land under the Jurisdiction of the San Francisco Port Commission*, adopted April 23, 2013, by Board of Supervisors Resolution No. 123-13, as amended from time to time solely to the extent required under IFD Law or other controlling state or federal law.

“Port Improvements” means Horizontal Improvements in the SUD that the Port funds, such as the Michigan Street segment and Irish Hill Park.

“Port Master Indenture” means the Indenture of Trust dated as of February 1, 2010, as supplemented by a First Supplement to Indenture of Trust, dated as of February 1, 2010, a Second Supplement to Indenture of Trust, dated as of May 1, 2014, and as further supplemented from time to time.

“Port Quarterly Report” means any of the Port’s periodic reports to Developer on Port Costs, Other City Costs, and Project Payment Sources under **FP § 9.2(e)** (Reporting).

“Port Revenue Bonds” means Port Commission of the City and County of San Francisco Revenue Bonds Series 2010A (Non-AMT Tax-Exempt), Series 2010B (Taxable), Series 2014A (Non-AMT Tax-Exempt), and Series 2014B (Taxable).

“Port Share” means 55% of the Interim Satisfaction Balance or Project Surplus, as applicable.

“Port Tax Increment” means 8.89% of Allocated Tax Increment.

“Port Tax Increment Debt Account” means the segregated account within the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, hold, and disburse [Port Tax Increment].

“Port Title Covenant” means the Port’s agreement not to voluntarily permit or cause to be created any new exceptions to title other than the Permitted Exceptions under **DDA § 8.3** (New Title Matters).

“portwide” means any matter relating to all real property under the jurisdiction of the Port Commission.

“potential breach” means the existence of breach for which proper notice has been provided to the defaulting party under the applicable Transaction Document, regardless of whether any cure period that follows such notice (as provided in the applicable Transaction Document) has expired. There shall be no potential breach if the breach is cured or the notice of such breach is withdrawn.

“pre-filing conference” means one or more optional meetings under Subdivision Code section 1320 between the County Surveyor and a person proposing to subdivide land in San Francisco to discuss preliminary Subdivision Maps and other subdivision matters before the subdivider formally submits a Subdivision Map application.

“Prepaid Lease” means a Parcel Lease under which a Vertical Developer prepays ground rent in the amount of an Option Parcel’s Fair Market Value. A Vertical Developer Affiliate may pay in cash or by Credit Bid or both subject to the limitations and conditions of **FP § 3.3** (Right to Credit Bid) and **FP § 3.4** (Amount of Credit Bid).

“Prepaid Rent” means rent that is payable to the Port at the Closing of a Prepaid Lease.

“pre-Phase conference” means one or more meetings between Developer and the Port under **DDA § 3.1** (Pre-Phase Conference) to discuss Phase Improvements before Developer submits a Phase Submittal.

“Preliminary Title Report” means the preliminary title report that the Title Company delivered to the Port and Developer as described in **DDA § 8.1(b)** (Title Report).

“Principal Payment Date” means:

- (i) before Bonds are issued, September 1 of each year; and
- (ii) after Bonds are issued, the date on which principal or sinking fund payments are due in each year until the Bonds are defeased.

“Prior Phase” means any Phase for which Developer obtained Phase Approval before a Current Phase.

“Product Type” when used in reference to a Development Parcel to be developed for residential use means a building with a typical unit count and building typology that allows for general assumptions regarding construction costs, which may differ between residential units for rent and for sale. Examples of Product Types are townhomes, low-rise (heights to 70 feet), and mid-rise (71- to 90-foot heights).

“Proforma” means, for illustrative purposes only, the financial model of the Parties’ projections for the Horizontal Improvements, the rehabilitation of Historic Building 2, Historic Building 12, and Historic Building 21, the construction of Arts Building, including the anticipated timing of spending requirements, the aggregate sum of Horizontal Development Costs of Horizontal Improvements, and the timing and amounts of Developer Capital, Port Capital Advances, Advances of Land Proceeds, Public Financing Sources, and other sources expected to be used to finance Horizontal Development Costs, the Historic Building Feasibility Gap, and the Arts Building Funding.

“Project Account” means the segregated account within the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Project Tax Increment.

“Project Approval” means the Regulatory Approvals shown on **DDA Exhibit A3** and all Future Approvals.

“Project Area G” means the project area formed when the IFD was established by Ordinance No. 27-16.

“Project Assignment” means a contractual assignment of all of Developer’s rights under a consulting contract with a Project Consultant, including any rights to use the Project Consultant’s work product.

“Project Consultant” means any architect, engineer, or other consultant that provided Project Materials for the 28-Acre Site Project.

“Project Materials” means all public, final, and material studies, applications, reports, permits, plans, drawings, and similar work product, including Structural Materials, prepared by Developer’s Project Consultants.

“Project Payment Obligation” means the Port’s contractual obligation to use Project Payment Sources on terms described in the Financing Plan to pay: (i) the Developer Balance to Developer and the Port Balance to the Port; (ii) Horizontal Development Costs directly; and (iii) the Historic Building Feasibility Gap.

“Project Payment Obligation” *excludes* payment obligations under the Financing Plan for Project Surplus (including any Interim Satisfaction Balance), the Arts Building Funding, Promissory Note-PC, and Promissory Note-X.

“Project Payment Sources” means, separately or collectively, Port Capital Advances, Advances of Land Proceeds, and Public Financing Sources, each applied as specified in the Financing Plan.

“Project Requirements” means

- (i) Developer’s obligations for the 28-Acre Site Project under the Project Approvals and Transaction Documents, including the Developer Construction Obligations and Developer Reimbursement Obligations; and
- (ii) Vertical Developers’ obligations for the 28-Acre Site Project under the Project Approvals and applicable conveyance agreements.

(iii) **“Project Reserve Account”** means the segregated account within the Facilities Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse funds for the purposes and on the conditions of **FP § 4.7(c)** (Project Reserve).

“Project Surplus” means Land Proceeds, including payments on Promissory Note-LP, available for revenue-sharing under the Financing Plan after the Project Payment Obligation has been satisfied.

“Project Tax Increment” means 91.11% of Allocated Tax Increment.

“Project Tax Increment Account” means the segregated account within the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Project Tax Increment.

“Project Tax Revenues” means Improvement Special Taxes from the Pier 70 CFDs and Project Tax Increment that are deposited in the Pier 70 Facilities Account and the Project Tax Increment Account in accordance with the Financing Plan.

“Promissory Note-LP” means a promissory note in the form of **FP Exh F** that is payable as described in **FP § 7.3(b)** (Promissory Note-LP and Promissory Note-X).

“Promissory Note-PC” means a promissory note in the form of **FP Exh H** that is payable as described in **FP § 7.5(c)** (Promissory Note-PC).

“Promissory Note-X” means a promissory note in the form of **FP Exh G** that is payable as described in **FP § 7.3(b)** (Promissory Note-LP and Promissory Note-X).

“proof of payment” means a cancelled check, a wire confirmation demonstrating delivery of a direct transfer of funds, an executed and acknowledged unconditional lien release, statements or invoices marked “paid” by the billing person, or other reasonably satisfactory evidence verifying that the person seeking payment actually incurred the claimed costs and the date on which each cost was incurred.

“Prop F” and **“Proposition F”** mean the *Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative* that San Francisco voters approved on November 4, 2014.

“Prop M” and **“Proposition M”** mean the *Planning Initiative* that San Francisco voters approved on November 4, 1986.

“Prop M Constraint” means, for the purpose of **DDA Exh A5**, that the total square footage available for Pending Projects exceeds the then-current total square footage available for large allocation projects at the end of an Allocation Period.

“Prop M Draw Down” means the amount of office space to be applied against the City’s annual maximum limit under Planning Code section 321(a)(1), based on the approved building drawings, which the Port will report to Planning when the Port issues a site or the building permit for an office project in the 28-Acre Site under **DDA Exh A5**.

“Prop M Schedule” means the schedule in **DDA Exh A5** that provides the dates when Planning will determine whether a Prop M Constraint exists.

“property damage” means any injury to or impairment or destruction of any property or other pecuniary interest of any person, including goodwill, intellectual property, and business and leasing opportunities.

“proprietary appraisal” means an appraisal report on the fair market value of a real property interest that is not subject to appraisal procedures in **DDA § 7.3** (Option Parcel Appraisals), **FP art. 9** (Arts Building), or **FP art. 10** (Historic Buildings).

“proprietary offering” means a public solicitation for offers to purchase or ground lease any real property interest owned by the Port or the City that is not subject to the procedures in **DDA § 7.5** (Public Offering Procedures).

“pro rata” means the proportion that each part of a sum bears to the sum.

“Public Facilities” means Horizontal Improvements that are or will be publicly owned or serve a public purpose.

“Public Financing Sources” means, separately or collectively, any source of financing available under CFD Law, IFD Law, and IRFD Law, including Mello-Roos Taxes, Allocated Tax Increment, Allocated Housing Tax Increment, and Bonds issued to finance Improvements in the FC Project Area and the AHP Housing Area.

“Public Offering” means a public solicitation by the Port for bids for the purchase or ground lease of an Option Parcel following the termination of Developer’s Option for that Option Parcel, using procedures described in **DDA § 7.5** (Public Offering Procedures).

“Public ROWs” means Horizontal Improvements consisting of public streets, sidewalks, shared public ways, bicycle lanes, and other paths of travel, associated landscaping and furnishings, and related amenities.

“Public ROWs Signage Plan” means a concept level Signage Plan for Public ROWs.

“Public Space” means Horizontal Improvements for public enjoyment, such as public parks, public recreational facilities, public access, open space, and other public amenities, some of which may be rooftop facilities.

“Public Space Improvement Plans” means Improvement Plans for Public Spaces, which Developer will submit under **DDA § 13.2(d)** (Public Space Plans).

“public trust” means, collectively, the common law public trust for commerce, navigation, and fisheries and the statutory trust created by the Burton Act.

“Public Trust Exchange” means a transaction between State Lands and the Port under which the public trust is terminated from certain portions of Pier 70, including all Development Parcels in the 28-Acre Site and the 20th/Illinois Parcel, and the public trust is confirmed on the remainder of Pier 70, as approved by State Lands under AB 418.

“Public Use Parcel” means any of Historic Building 12, Historic Building 21, the Arts Building and the Affordable Housing Parcels.

“Public Works” means the San Francisco Public Works Department.

“Qualified Appraiser” means an appraiser who meets the qualifications of **DDA § 7.3(b)** (Appraiser Qualifications).

“Qualified Appraiser Pool” means the list of Qualified Appraisers attached as **DDA Sch 2** and as revised from time to time under **DDA § 7.3(c)** (Qualified Appraiser Pool).

“Qualified Bidder” means a bidder at a Public Offering that meets the qualifications of **DDA § 7.5(c)** (Bidder Prequalification).

“Qualified Broker” means a licensed real estate broker with at least five years’ experience in the Bay Area market for commercial or multifamily residential sales and leasing, or both.

“Qualified Broker Pool” means the list of Qualified Brokers attached as **DDA Sch 3** and as revised from time to time under **DDA § 7.5(a)** (Broker-Managed Offerings).

“Rate and Method of Apportionment” means a Financing Document that the Board of Supervisors adopted by each CFD resolution of formation that prescribes how and at what rates the City will levy and collect Mello-Roos Taxes from taxpayers in the designated CFD.

“Ready for Close” means, when referring to the Pier 70 CFD Facilities Account(s), the Hoedown Yard Facilities Account, or the Project Reserve Account, that all of the following have occurred: (i) the Final Audit has occurred for all Phases of the 28-Acre Site Project; (ii) the Project Payment Obligation is satisfied in full; (iii) all Land Proceeds have been distributed pursuant to the Financing Plan; and (iv) Promissory Note-LP has been paid in full.

“Reassessed Parcel” means a Taxable Parcel that Developer or a Vertical Developer Affiliate holds in fee or by Parcel Lease on which the assessed value is lowered through a Reassessment.

“Reassessment” means a reduction in ad valorem taxes assessed against a Taxable Parcel through a proceeding under the California Revenue & Taxation Code.

“Reassessment Date” means the date on which a Reassessment is final.

“Receipt Date” means each date that the Port, as agent of the IFD, the IRFD, or any CFD, receives Allocated Tax Increment, Allocated Housing Tax Increment, or Mello-Roos Taxes from the City by the deposit of funds into the Special Fund Trust Account.

“Reference Date” means the date on which the DDA is fully executed.

“Regulatory Action” means any inquiry, investigation, enforcement, agreement, order, consent decree, compromise, or other administrative or judicial action that is threatened, instituted, filed, or completed by a Regulatory Agency in relation to any alleged failure to comply with or direct violation of any Regulatory Approval or any laws, including those relating to access.

“Regulatory Agency” means a City Agency or any Other Regulator.

“Regulatory Approval” means any motion, resolution, ordinance, permit, approval, license, registration, permit, utility services agreement, Final Map, or other action, agreement, or entitlement required or issued by any Regulatory Agency with jurisdiction over any portion of the 28-Acre Site, as finally approved.

“Regulatory Requirement” means laws or policies applicable to the development, occupancy, and use of the 28-Acre Site Project, subject to the Port’s authority as trustee under the Burton Act as amended by AB 418, including:

- (i) the Project Approvals and other Regulatory Approvals;
- (ii) Existing City Law;
- (iii) Changes to Existing City Law to the extent permitted under the DA;

- (iv) Impact Fees and Exactions applicable to the 28-Acre Site Project under the DA; and
- (v) Environmental Laws, and
- (vi) the Other City Requirements.

“release” when used in reference to Hazardous Materials means any actual or threatened, accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment, including abandoning or discarding barrels, containers, and other closed receptacles containing any Hazardous Material.

“release” excludes any passive migration of a Hazardous Material through the air, soil gas, land, surface water, or groundwater after a third party has previously spilled, leaked, pumped, poured, emitted, discharged, injected, escaped, leached, dumped, or disposed of the Hazardous Material into the air, soil, gas, land, surface water, or groundwater.

“remediate” when used in reference to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency under applicable Environmental Laws and any additional Port requirements.

“Rent Conversion Factor” means the formula specified in a Final Appraisal that is used to convert the Port Share of the Fair Market Value of an Option Parcel from Prepaid Rent to Annual Ground Rent.

“Rental Unit” means a room or suite of two or more rooms with provisions for sleeping, eating, and sanitation that is designed for residential occupancy for 32 consecutive days or more by one household and may include senior and assisted living facilities.

“Request for SOP Compliance Determination” means the packet submitted by Developer containing the materials listed in **DDA Exh B9**.

“Requested Change Notice” means Developer’s notice to the Port requesting changes to the Phasing Plan under **DDA § 3.9** (Changes to Project after Phase 1).

“Required Element” means a substantial and material element of any Construction Document requiring Port approval under **DDA art. 13** (Construction Documents).

“Residential Condo Project” means a Residential Parcel that is developed with Condo Units.

“Residential Condo Project Tax Increment” means the Project Tax Increment derived from all Residential Condo Units in a Residential Condo Project.

“Residential Parcel” means a Development Parcel that may be developed for residential use under the SUD.

“Residential Project” means a Development Parcel that is developed for residential use.

“Residential Test Parcel” means a Residential Parcel that is selected for a Down Market Test under **DDA § 4.5(a)** (Timing).

“residential unit” means a separate unit in a developed Residential Parcel and includes any apartment unit, condominium or cooperative unit, hotel or motel room, or other structure containing toilet facilities that is designed and available under applicable law for use and occupancy as a residence by one or more individuals.

“Restrictive Covenant” means, as applicable in the context, a recorded document encumbering:

- (i) a Market-Rate Project that specifies the required number of Inclusionary Units at specified affordability levels in accordance with the Affordable Housing Plan; or

- (ii) a Development Parcel transferred to a Vertical Developer under a Vertical DDA that imposes obligations and covenants that run with the land.

“Return on Port Capital” means the annual rate of 10%, compounded quarterly, the rate at which interest accrues on the principal amount of Promissory Note-PC.

“Revenue Account” means a segregated account established within the Land Proceeds Fund to hold and disburse Land Proceeds for revenue-sharing.

“revenue-sharing” means the Parties’ Agreement to split the Interim Satisfaction Balance and the Project Surplus by the Port Share and the Developer Share.

“RMA” is an acronym for the Rate and Method of Apportionment for each CFD to be established under the Financing Plan.

“Schedule of Performance” means **DDA Exh A8**, subject to revision under the DDA.

“Schematic Design Application” means a Public Space design documents that Developer submits to the Port under **DDA § 13.6(a)** (Applications).

“Second Transition Notice” means a written notice provided by the Vertical Developer under the applicable Parcel Lease for the Temporary Noonan Replacement Space, with Port’s cooperation and consultation, that will provide the Noonan Tenants with a minimum of 24 months’ prior written notice of the termination of the applicable sublease(s) at the Temporary Noonan Replacement Space, with the opportunity to relocate to the Permanent Noonan Replacement Space upon termination.

“Secretary’s Standards” means the Standards for Rehabilitation of Historic Properties (for historic tax credit projects) and related Guidelines published in the Secretary of the Interior’s Standards for the Treatment of Historic Properties.

“Secured Amount” means the amount of Phase Security required under **DDA § 17.3(e)** (Secured Amount).

“Services Account” means a segregated account that the Port will establish with the Special Fund Trustee to receive, administer, and disburse Services Special Taxes from a Services CFD.

“Services CFD” means a CFD or part of a CFD that authorizes the levy of Services Special Taxes to finance Ongoing Maintenance Costs.

“Services CFD Administrative Costs” means CFD Administrative Costs payable from Services Special Taxes.

“Services Special Tax Fund” means the segregated accounts within the Special Fund Trust Account consisting of the Pier 70 Leased Property Services Account, the Pier 70 Condo CFD Services Account (for Zone 1 and Zone 2), and the Hoedown Yard Services Account that the Port, as CFD Agent, establishes with the Special Fund Trustee to receive, administer, and disburse Services Special Taxes on behalf of the CFD through the Special Fund Administration Agreement.

“Services Special Taxes” means Mello-Roos Taxes that the City levies in a City Fiscal Year on Taxable Parcels in a CFD to fund Ongoing Maintenance Costs as specified in the applicable RMA.

“SFAC” is an acronym for the San Francisco Arts Commission.

“SFFD” is an acronym for the San Francisco Fire Department.

“SFMTA” is an acronym for the San Francisco Municipal Transportation Agency.

“SFPUC” is an acronym for the San Francisco Public Utilities Commission.

“Shoreline Adaptation Studies” means analysis and planning to characterize the preferred and Shoreline Protection Project and alternatives, including pre-entitlement planning and design work,

environmental review, negotiation, and Regulatory Approvals related to the Shoreline Protection Facilities, conducted in accordance with **FP § 4.7(f)** (Pier 70 Shoreline Facilities).

“Shoreline Facilities Account” means the segregated account in the Tax Increment Fund that the Port will establish with the Special Fund Trustee to receive, administer, and disburse Shoreline Special Taxes under the Special Fund Administration Agreement. **[WHY IS THIS PART OF THE TAX INCREMENT FUND?]**

“Shoreline Improvements” means Horizontal Improvements such as shoreline restoration, including installation of stone columns, pilings, secant walls, and other structures to stabilize the seawall or shoreline, removal of bay fill, creation of waterfront public access to or environmental remediation of the San Francisco waterfront, all of which are permitted uses of the Waterfront Set-Aside.

“Shoreline Protection Facilities” means future waterfront Improvements at the San Francisco shoreline to protect the area from perils associated with seismic events and climate change, including sea level rise and floods, and other public improvements approved by the Port Commission and the Board of Supervisors.

“Shoreline Protection Project” means the construction of Shoreline Protection Facilities.

“Shoreline Reserve Account” means the segregated account within the Facilities Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse funds in accordance with **FP § 4.7(e)** (Shoreline Reserve).

“Shoreline Special Taxes” means Improvement Special Taxes that are identified as Shoreline Special Taxes and levied in accordance with the RMA for the Pier 70 Leased Property CFD on conditions described in **FP § 4.7(e)** (Shoreline Facilities Account).

“SHPO” means the California State Historic Preservation Office.

“Signage Plan” means one of the comprehensive signage plans that will cover the Park Parcels, Public ROWs, and Buildings **[NOT DEFINED]** and provide for an interpretive signage program that Developer will submit to the Port under **DDA § 13.10** (Signage).

“Significant Adverse Change” means a final judgment is entered against Developer in an amount greater than \$100 million that it does not satisfy or bond.

“Significant Change” means (i) any change in the direct or indirect ownership of Developer that results in a change in Control of Developer, or (ii) a change in the Person with the power to direct or cause the direction of the day-to-day management of Developer (exclusive of a so-called “major decision” and similar rights).

“Significant Change” excludes:

(i) the exercise of remedies under Mezzanine Financing of Developer or any constituent owner thereof;

(ii) the removal of a general partner or managing member pursuant to the exercise of remedies under a partnership or limited liability company operating agreement;

(iii) the sale, transfer or issuance of stock so long as such stock is listed on a national or internationally recognized stock exchange; or

(iv) a change resulting from death or legal incapacity of a natural person..

“Significant Change to Obligor” means the occurrence of any of the following:

(i) the Obligor’s Insolvency;

(ii) a final judgment is entered against the Obligor in an amount greater than 10% of the Obligor Net Worth, which the Obligor does not satisfy or bond; or

(iii) an Obligor no longer meets the Obligor Net Worth Requirement.

“Site Preparation” means physical work to prepare and secure the 28-Acre Site for installation and construction of Horizontal Improvements, such as demolition or relocation of existing structures, excavation and removal of contaminated soils, fill, grading, soil compaction and stabilization, and construction fencing and other security measures and delivery of the Affordable Housing Parcels as required under the AHP.

“Site Preparation Plans” mean Improvement Plans for demolition, utility relocation, mass grading, ground improvement, and shoreline repair.

“Soft Costs” means the reasonable and customary out-of-pocket costs actually incurred and paid in connection with the construction of the Horizontal Improvements and implementation of Developer obligations under the DDA, including:

- (i) architectural, engineering, consultant, attorney, and other professional fees, including the cost of any Qualified Appraiser and the costs of consultants related to public financing to the extent not reimbursed by Public Financing Sources;
- (ii) property insurance (including General Liability, Automobile Liability, Worker’s Compensation, Personal Property, Flood, PLL, CPL, watercraft liability, marine general liability, vessel pollution liability, builder’s risk, and professional services insurance);
- (iii) construction management fees paid to or by Developer, an Assignee of Developer, or their respective Affiliates; project management costs incurred by the Developer; and asset management costs incurred by Developer, the aggregate of all three of the foregoing categories shall be limited to 15% of Hard Costs except that Developer shall have right to submit for reimbursement of actual costs in excess of this threshold and Port shall provide reimbursement subject to the Port’s confirmation of the charges as commercially reasonable, which confirmation will not be unreasonably withheld;
- (iv) regulatory fees other than building and site permit fees;
- (v) CEQA mitigation measures and any additional environmental review as required;
- (vi) costs required under the DDA or any community benefits agreement paid by Developer;
- (vii) Impact Fees paid by Developer;
- (viii) Port Costs and Other City Costs;
- (ix) costs incurred in utilizing Other Sources (to the extent not paid for by Other Sources or included as Hard Costs);
- (x) Improvement Special Taxes and any other taxes, assessments, fees or other costs paid by Developer associated with the Master Lease;
- (xi) security required under the DDA or otherwise in connection with the Developer Improvements, including any Adequate Security;
- (xii) safety and security measures;
- (xiii) community outreach associated with the 28-Acre Site Project;
- (xiv) moving expenses for eligible Noonan Tenants to both the Temporary Noonan Replacement Space and the Permanent Noonan Replacement Space, as described in **Section 7.14(c)** of the DDA;
- (xv) maintenance of parks, streets, and public areas paid by Developer;
- (xvi) third-party costs to prepare and store Developer Quarterly Reports, Phase Audits, Final Audits, and Developer’s Books and Records;

- (xvii) Developer Closing Costs;
- (xviii) Developer Marketing Costs;
- (xix) the Entitlement Sum;
- (xx) any other amount specifically identified in a Transaction Document as Soft Costs or a category of Soft Costs.

Quality, quantity, types of materials, and workmanship shall be provided in accordance with the plans and specifications as approved by Port and/or SFPDW. Work not meeting the requirements as approved shall be repaired or replaced at no additional cost.

“Soft Costs” exclude:

- (1) *Hard Costs;*
- (2) *Developer’s (or any Affiliate’s) corporate office, personnel, and overhead costs;*
- (3) *staff, consultant, advertising, and any other costs incurred to lobby or campaign for any ballot measure affecting the 28-Acre Site Project;*
- (4) *construction financing costs (loan fees and interest) for Developer Improvements; and*
- (5) *Vertical Phase Costs, and other costs of or allocated to vertical development.*

“SOP Compliance Determination” means the Chief Harbor Engineer’s approval of a Developer SOP Compliance Request in accordance with **DDA § 15.5** (Interim Phase Completion).

“Special Debt Service” means that portion of the debt service on, or replenishment of reserve funds for, CFD Bonds issued in the Pier 70 Leased Property CFD in an amount equal to the Facilities Special Taxes levied on NOI Property in the Pier 70 Leased Property CFD.

“Special Facility” means the SUD and any other Port facility designated as such under the Port Master Indenture.

“Special Facility Revenue” means revenue that the Port earns from or with respect to any Special Facility designated in the Port Master Indenture.

“Special Facility Revenue Bonds” means Bonds issued by or on behalf of the CFD or the IFD that is secured and payable by a pledge of Special Facility Revenue.

“Special Fund Administration Agreement” means an agreement between the Port in its proprietary capacity, as CFD Agent, and as IFD Agent, and the Special Fund Trustee authorizing the trustee to receive, administer, and disburse funds in the Special Fund Trust Account to implement the Financing Plan.

“Special Fund Trust Account” means, collectively, the Land Proceeds Fund, the Facilities Special Tax Fund, and the Tax Increment Fund, including segregated accounts within each fund.

“Special Fund Trustee” means a bank, national banking association, or a trust company having a combined capital (exclusive of borrowed capital) and surplus of at least \$50 million, and that is subject to supervision or examination by federal or state authority.

“Special Tax Requirement” means the amount that Facilities Special Taxes, Shoreline Special Taxes, Arts Building Special Taxes, and Services Special Taxes, as applicable, must fund in any City Fiscal Year, as set forth in the RMA.

“Special Taxes” when used with a modifier means Mello-Roos Taxes levied in the designated CFD.

“State” means the State of California.

“State Lands” means the California State Lands Commission.

“Statement of Indebtedness” means the annual report that the IFD must file with the Treasurer-Tax Collector under IFD Law and the Port IFD Guidelines.

“Street and Utility Easements” means easements and agreements relating to Public ROWs and various public utilities, including gas, sewer, water, and electrical service.

“Streetscape Master Plan” means the master plan for Public ROW Improvements within the 28-Acre Site, to be submitted by Developer and approved by applicable City Agencies.

“Streetscape Submittal Date” means the date that Developer submit its final Streetscape Master Plan application to the Port, which must be within 90 days after the Reference Date

“Structural Consultant” means any Project Consultant who prepared Structural Materials.

“Structural Materials” means Project Materials relating to structural strengthening, maintenance, and repair of the substructure and superstructure of piers and wharves, Horizontal Improvements for, and subsurface stabilization of, any part of the 28-Acre Site.

“Subdivision Code” means the San Francisco Subdivision Code and Subdivision Regulations, subject to applicable amendments or procedures in the DA Ordinance and Development Agreement.

“Subdivision Map” means any map that Developer submits for the 28-Acre Site under the Map Act and the Subdivision Code.

“Subordination Event” means the termination of any part of the DDA with respect to Developer’s rights following a Material Breach under the DDA.

“Sub-Project Area” means, individually or collectively, Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4.

“Sub-Project Area G-1” means the sub-project area within IFD Project Area G consisting of the 20th Street Historic Core.

“Sub-Project Area G-2” means the sub-project area within IFD Project Area G as described in Appendix G-2.

“Sub-Project Area G-3” means the sub-project area within IFD Project Area G as described in Appendix G-2.

“Sub-Project Area G-4” means the sub-project area within IFD Project Area G as described in Appendix G-2.

“Sub-Project Area Ordinance” means Ordinance No. XX, which became effective on [date].

“successor” means heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring any portion of or any interest in the FC Project Area, Developer, or a Vertical Developer, whether by sale, operation of law, or in any other manner.

“Successor by Foreclosure” means any person who obtains title to all or any portion of or any interest in the FC Project Area as a result of foreclosure proceedings, conveyance or other action in lieu of foreclosure on a Permitted Lien, or other remedial action, including:

- (i) any other person who obtains title to all or any portion of or any interest in the FC Project Area or a Borrower from or through a Permitted Lender, including a Permitted Lender’s nominee;
- (ii) any other purchaser at a foreclosure sale; and
- (iii) any successor to either of the above.

“**SUD**” is an acronym for the Pier 70 Special Use District created by Planning Code section 249.70 and related zoning maps setting forth zoning and other land use limitations for the 28-Acre Site.

“**SUD amendments**” means the amendment to Planning Code section 201, the addition of Planning Code section 249.70, which incorporates the Design for Development, and amendments to the Zoning Maps adopted to form and regulate the SUD.

“**SUD Project**” means the environmental review and other actions leading to adoption of the SUD Amendments and other entitlements for the SUD Project.

“**Summary Proforma**” means, for illustrative purposes only, the detailed document that Developer prepared to provide an accurate summary of the Proforma, a copy of which is attached to the Financing Plan as **FP Sch 1**, and any superseding or revised summaries prepared from time to time in accordance with the DDA.

“**Tax Allocation MOU**” is a term for the Memorandum of Understanding (Assessment, Levy, and Allocation of Taxes).

“**Tax Code**” means the Internal Revenue Code of 1986, as amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the United States Internal Revenue Code.

“**Tax Increment**” refers to one or more of Allocated Tax Increment, Housing Tax Increment, the City Share of Tax Increment, ERAF Tax Increment, Gross Tax Increment, Port Tax Increment, and Project Tax Increment, as appropriate in the context.

“**Tax Increment Bonds**” means any Bonds of the IFD with respect to Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4, including obligations incurred under a Pledge Agreement, secured and payable by a pledge of or otherwise payable from Allocated Tax Increment.

*“**Tax Increment Bonds**” excludes Mello-Roos Bonds and Housing Tax Increment Bonds.*

“**Tax Increment Debt Service Requirement**” means the debt service payable on Tax Increment Bonds in a City Fiscal Year before the next expected Receipt Date of Allocated Tax Increment.

“**Tax Increment Fund**” means the segregated accounts within the Special Fund Trust Account consisting of the Waterfront Set-Aside Account, the Project Account, the Port Account, and the Shoreline Facilities Account that the Port, as IFD Agent, establishes with the Special Fund Trustee to receive, administer, and disburse Annual Allocated Tax Increment on behalf of the IFD through the Special Fund Administration Agreement.

“**Tax Revenues**” means any Improvement Special Taxes or Tax Increment deposited in a Special Fund for use in accordance with the Financing Plan.

“**Taxable Commercial Parcels**” means a Taxable Parcel that is a Commercial Parcel.

“**Taxable Parcel**” means an assessor’s parcel of real property or other real estate interest that is not exempt from taxation and assessments, including Taxable Commercial Parcels, Taxable Residential Units, and leased space occupied for private use in an Exempt Parcel.

“**Taxable Residential Unit**” means a Taxable Parcel that is a residential unit.

“**Taxing Entities’ Share of Tax Increment**” means 10.08% of Gross Tax Increment on the Reference Date.

“**TCO**” is an acronym for a Temporary Certificate of Occupancy.

“**Temporary Certificate of Occupancy**” means a certificate of occupancy that the Chief Harbor Engineer issues under the Port Building Code allowing a discrete portion of a building to be occupied or conditional occupancy of a building.

“Temporary Noonan Replacement Space” means a temporary replacement space to house the Noonan Tenants within the 28-Acre Site that will allow for the demolition of the Noonan Building in accordance with **DDA Section 7.14**.

“Tentative Map” means a Tentative Transfer Map, Vesting Tentative Transfer Map, Tentative Map, or Vesting Tentative Map as defined in the Subdivision Code.

“Terminated Phase” means a Phase that is terminated under **DDA art. 12** (Material Breaches and Termination).

“Termination Date” means the date on which a termination under **DDA art. 12** (Material Breaches and Termination) becomes effective.

“third party” means a person that is not Developer, the Port, the City, or any of their Agents or Affiliates.

“Third-Party Challenge” means an action challenging the validity of any provision of the DDA or the Development Agreement, the 28-Acre Site Project, any Project Approval or Future Approval, the adoption or certification of the Final EIR, other actions taken under CEQA, or any other Project Approval.

“Time-Sensitive Matter” means a Party’s obligations that are due at a specific time under the DDA, including under the Schedule of Performance and the Financing Plan.

“Transaction Document” means any of the following, individually or collectively:

- (i) the DDA, including the Financing Plan, this Appendix, and all attached exhibits, schedules, and implementing agreements and plans;
- (ii) each Vertical DDA and associated documents by which the Port conveys a Development Parcel;
- (iii) each Assignment and Assumption Agreement governing a Transferee’s rights and obligations for the 28-Acre Site Project;
- (iv) the ICA;
- (v) the Development Agreement;
- (vi) the Master Lease; and
- (vii) any other agreement governing the Parties’ respective rights and obligations with respect to the development or operation of any portion of the 28-Acre Site.

“Transfer” means (i) suffer or permit any Assignment or Significant Change to occur; provided, however, neither the granting of a Mortgage nor the pledge of equity interests in connection with a Mezzanine Financing in accordance with the terms of the DDA, nor the exercise of remedies thereunder, shall constitute a Transfer for purposes of the DDA.

“Transfer” excludes any agreement under which a Vertical Developer is required to build Deferred Infrastructure.

“Transfer Map” means a map for the 28-Acre Site pursuant to the Subdivision Map Act filed by the Developer that creates a separate legal parcel for each Development Parcel, which may include Condo Units.

“Transferee” means any person to which Developer Transfers its rights and corresponding obligations relating to a Phase, Horizontal Improvements, or horizontal development as permitted under **DDA art. 6** (Transfers).

“Transferee” excludes any Vertical Developer, Lender, or successor to either except to the extent of assumed horizontal development rights or obligations (not including Deferred Infrastructure) as permitted under the DDA.

“Transferee Affiliate” means a Transferee that is an Affiliate of Developer.

“**Transferred Phase**” means a Phase that Developer proposes to Transfer or that has been Transferred in accordance with **DDA art. 6** (Transfers).

“**Transition Notice**” means notice delivered to the Noonan Tenants at least 24 months before Developer will provide them with the opportunity to relocate to the Noonan Replacement Space under **DDA § 7.11** (Noonan Replacement Space).

“**Transportation Infrastructure**” means Improvements and technology necessary for transportation and public transit services on or serving the 28-Acre Site that will be under SFMTA jurisdiction, including vehicular traffic and transit signaling and signs; pedestrian traffic controls; overhead traction power cabling and supports, street lighting supports; wayside control and communication systems and devices; electrical substations, junction boxes, underground conduit and duct banks; transit stops; and street and curb striping.

“**Transportation Plan**” means **DDA Exh B5**, which contains strategies that Developer is required to implement to address movement in and around the 28-Acre Site.

“**Transportation-Related Mitigation Measure**” means any Mitigation Measure, including the TDM Plan, that SFMTA is responsible for monitoring or implementing.

“**Treasurer-Tax Collector**” means the Treasurer and Tax Collector of the City and County of San Francisco.

“**Unanimous Approval**” means a written certificate executed by 100% of the owners of a Development Parcel requesting annexation of the Development Parcel to a CFD, pursuant to the CFD Law.

“**Undeveloped Property**” means, in any City Fiscal Year, Taxable Parcels that are not Developed Property or Vertical DDA Property.

“**Unrelated Transferee**” means a Transferee that is not an Affiliate of Developer.

“**Unrelated Vertical Developer**” means a Vertical Developer that is not Developer or an Affiliate of Developer.

“**Utility Infrastructure**” means Horizontal Improvements for utilities serving the 28-Acre Site that will be under SFPUC jurisdiction when accepted.

*“**Utility Infrastructure**” excludes telecommunications infrastructure and any privately owned utility improvements, including a proposed blackwater plant serving the 28-Acre Site.*

“**Utility-Related Mitigation Measure**” means any Mitigation Measure that SFPUC is responsible for monitoring or implementing. [Delete if none in MMRP.]

“**VDDA**” is an acronym for Vertical DDA.

“**Vertical Cooperation Agreement**” means an agreement entered into between a Vertical Developer and Developer in accordance with the requirements of the Vertical DDA.

“**Vertical DDA**” means vertical disposition and development agreement, a document between the Port and a Vertical Developer in the form of **DDA Exh D3**.

“**Vertical Developer**” means a person that acquires Parcel K North or a Development Parcel from the Port under a Vertical DDA for the development of Vertical Improvements.

“**Vertical Developer Affiliate**” means a Vertical Developer that is an Affiliate of Developer.

“**Vertical Developer Party**” means any Vertical Developer, its Affiliates, their Agents, and Invitees to the 28-Acre Site, individually or collectively.

“**vertical development**” means planning, design, and construction or rehabilitation of buildings and other structures on legal parcels.

“Vertical Improvement” means a new building that is built or a Historic Building that is rehabilitated at the 28-Acre Site.

“Vested Element” means a specific component of the land use entitlements granted to Developer by the Project Approvals, including the locations and numbers of buildings, permitted land uses, height and bulk limits, and parking.

“Water Board” means the San Francisco Bay Regional Water Quality Control Board of the California Water Resources Control Board.

“Waterfront Plan” means the Port’s Waterfront Land Use Plan, including the Waterfront Design and Access Element, which is the basis for the Port’s regulation of land uses on Port property.

“Waterfront Set-Aside” means a minimum of 20% of Annual Allocated Tax Increment and 20% of ERAF Tax Increment from Project Area G, which under IFD Law must be spent for shoreline restoration, removal of bay fill, and creation of waterfront public access to or environmental remediation of the San Francisco waterfront.

“Waterfront Set-Aside Account” means the segregated account within the Special Fund Trust Account for the Waterfront Set-Aside funds.

“Zone” means a subarea in a CFD, as identified in the applicable RMA.

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