

DDA EXHIBIT B3

AFFORDABLE HOUSING PLAN

of

DISPOSITION AND DEVELOPMENT AGREEMENT

(Pier 70 28-Acre Site)

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Attachments

- AHP Attachment A: Form of Housing Map
- AHP Attachment B: City and County of San Francisco Inclusionary Affordable Housing Monitoring and Procedures Manual
- AHP Attachment C: Initial In-Lieu Fee Rate Schedule

SUMMARY

This Affordable Housing Plan has been designed to facilitate development of at least 30% of all Residential Units built in the AHP Housing Area as BMR Units or Inclusionary Units. In addition, at build-out of each Phase Area of the 28-Acre Site, this Affordable Housing Plan requires that not fewer than 20% of all Residential Units in the AHP Housing Area be BMR Units or Inclusionary Units.

The DDA obligates Developer to construct all of the necessary Horizontal Improvements needed for the development of Affordable Housing Projects on three designated Affordable Housing Parcels in the AHP Housing Area. This Affordable Housing Plan also requires Vertical Developers of Market-Rate Rental Projects to provide 20% of the Rental Units as below-market-rate, on-site Inclusionary Units.

The Affordable Housing Projects will be developed by Affordable Housing Developers selected by MOHCD. Developer is required to deliver the Affordable Housing Parcels to MOHCD and to either construct or reimburse MOHCD for the Horizontal Improvements needed for development. The Parties anticipate that the Affordable Housing Parcels at full build-out will include no less than 327 BMR Units.

In the Development Agreement, the City has agreed to allocate and use Impact Fees and other City sources described below to fund a portion of the costs of the Affordable Housing Projects.

- Vertical Developers of Market-Rate Condo Projects on the 28-Acre Site will not be allowed to provide Inclusionary Units under this Affordable Housing Plan. Instead, they will be required to pay 28-Acre Site Affordable Housing Fees that will be deposited into the Citywide Affordable Housing Fund. MOHCD will administer and use these funds for the Affordable Housing Projects.
- Each Vertical Developer of a Commercial Project on the 28-Acre Site will be required to pay the 28-Acre Site Jobs/Housing Equivalency Fee. MOHCD will administer and use these funds for the Affordable Housing Projects.
- The City has formed an IRFD over the Hoedown Yard. Under the IRFD Financing Plan and the Tax Allocation MOU, the City has agreed to allocate and use Housing Tax Increment for the Affordable Housing Projects.

This Summary is provided for convenience and for informational purposes only. In the case of a conflict between the terms of this Summary and the Affordable Housing Plan, the provisions of the Affordable Housing Plan shall prevail.

1. DEFINITIONS

The following terms specific to this Affordable Housing Plan have the meanings given to them below or are defined where indicated. Initially capitalized and other terms not listed below are defined in the **Appendix Part B** or in other Transaction Documents as specified in **Appendix Part C**. In accordance with *App* ¶ 8.1 (*General Rule*), this Affordable Housing Plan and all AHP-specific definitions will prevail over any other Transaction Document in relation to Developer's affordable housing rights and obligations. All references to the DDA include this Affordable Housing Plan unless explicitly stated otherwise.

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

"28-Acre Site Affordable Housing Fee" means the 28-Acre Site Project-specific Impact Fee imposed on Market-Rate Condo Projects under **Section 6.2** (Market-Rate Condo Projects).

"28-Acre Site Jobs/Housing Equivalency Fee" means the 28-Acre Site Project-specific Impact Fee imposed under the Development Agreement.

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

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

"Affordable Housing Parcel Completion Date" means the date on which Developer has satisfied the requirements of **Subsection 3.3(a)** (Required Improvements), subject to **Section 3.4** (Developer's Reimbursement Option).

"Affordable Housing Project" means the building that an Affordable Housing Developer builds on an Affordable Housing Parcel in which 100% of the Residential Units are BMR Units, with the exception of the manager's unit. 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 Parcel" means a development parcel upon which an Affordable Housing Project is to be built.

"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 28-Acre Site and Parcel K South.

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

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

100 BMR Credits, Parcel C2A will have 100 BMR Credits, and Parcel K South will have 121 BMR Credits.

“**BMR Unit**” means a below-market-rate Residential Unit constructed in an Affordable Housing Project. Inclusionary Units are not BMR Units.

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

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

“**Condo Unit**” means a Residential Unit that is intended to be offered for sale in fee for individual ownership.

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

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

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

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

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

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

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

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

“**Inclusionary Unit**” means a Rental Unit that is: (i) available to and occupied by a household with an income not exceeding the Maximum Inclusionary AMI; and (ii) rented at an Affordable Housing Cost for households with incomes at or below the Maximum Inclusionary AMI, subject to adjustment as provided in **Section 9.2** (Potrero Terrace and Annex) and **Section 9.3** (Housing for Special Populations) if applicable. BMR Units are not Inclusionary Units.

“**Interim Affordable Percentage**” is defined in **Subsection 2.2(b)** (Required Interim Threshold).

“**Marketing and Operations Guidelines**” is defined in **Subsection 6.1(c)** (Marketing).

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

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

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

“**Maximum Inclusionary AMI**” is defined in **Subsection 6.1(a)** (Development).

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

“**Parking Charge**” means the market-rate charge for a parking space that is accessory to one or more Residential Projects on the 28-Acre Site.

“**Parking Space**” means a parking space constructed by or on behalf of any Vertical Developer, including an Affordable Housing Developer.

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

“**Restrictive Covenant**” means a recorded document encumbering a Market-Rate Project that specifies the required number of Inclusionary Units at specified affordability levels in accordance with this Affordable Housing Plan.

“**Section 415**” means the City’s Inclusionary Affordable Housing Program (Planning Code §§ 415 and 415.1 through 415.11).

“**Utility Allowance**” means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include an amount published periodically by the San Francisco Housing Authority based on standards established by HUD, for the cost of basic utilities for households, adjusted for Household Size. If both the San Francisco Housing Authority and HUD cease publishing a Utility Allowance, then Vertical Developers may use another publicly-available and credible dollar amount approved by MOHCD.

2. HOUSING DEVELOPMENT

2.1. Residential Development at Full Build-Out.

(a) Final Affordable Percentage. Due to the flexibility in uses permitted on certain Development Parcels under the Pier 70 Special Use District, the maximum number of Residential Units permitted on the 28-Acre Site ranges from 1,100 Residential Units (under a development scenario that maximizes commercial uses) to 2,150 Residential Units (under a development scenario that maximizes residential uses). This Affordable Housing Plan has been designed to achieve a development scenario in which, upon Final Completion of all Residential Projects, the sum of the Inclusionary Units and the BMR Units in the AHP Housing Area, including the BMR Credits, equals or exceeds 30% of the total number of Residential Units constructed in the AHP Housing Area (the “**Final Affordable Percentage**”) at a midpoint development scenario of 1,702 units within the 28-Acre Site. The City, through MOHCD, will control the design, size, typology, construction, financing, operation, and nature of the Affordable Housing Projects to be built on the Affordable Housing Parcels. Thus, achievement of the Final Affordable Percentage will be controlled by the City.

(b) Developer’s Obligations. The Parties acknowledge that Developer’s obligations under this Affordable Housing Plan are limited to delivering the Affordable Housing Parcels to Port for delivery to MOHCD as specified herein.

(c) Vertical Developers’ Obligations. Vertical Developers’ obligations under this Affordable Housing Plan and the Development Agreement are limited to: (i) satisfying the Inclusionary Obligation for any Market-Rate Rental Project; (ii) paying the 28-Acre Site Affordable Housing Fee for any Market-Rate Condo Project; and (iii) paying the 28-Acre Site Jobs/Housing Equivalency Fee for any Commercial Project. For reference purposes only, the In-Lieu Fee Rate Schedule in effect on the Reference Date is attached as **AHP Attachment C**.

2.2. Interim Residential Development.

(a) Phasing Effect. The Parties understand that, due to the phased nature of the development of the AHP Housing Area, the Final Affordable Percentage may not be met at any given time prior to Final Completion of all Residential Projects on the AHP Housing Area. However, the Parties agree that at least 20% of Residential Units on the AHP Housing Area must at all times be Inclusionary Units or BMR Units, taking into account the BMR Credits earned.

(b) Required Interim Threshold. When all Residential Projects within each Phase other than the Final Phase are Substantially Complete: (i) the sum of all Inclusionary Units for which a Temporary Certificate of Occupancy has been issued plus any BMR Credits earned; (ii) must not be less than 20% of the sum of all Completed Residential Units *plus* any BMR Credits (the “**Interim Affordable Percentage**”). Developer acknowledges that the Port will not approve a Phase Submittal if development in accordance with the Phase Submittal would not meet the Interim Affordable Percentage.

(c) Illustrative Calculation. For example, if in Phase 2:

(i) Vertical Developers have built 875 Completed Residential Units, so the Interim Affordable Percentage is 175 (20% of 875);

(ii) of the Completed Residential Units, 75 are Inclusionary Units; and

(iii) Developer has caused the Affordable Housing Completion Date to occur for Parcel C2A and received 100 BMR Credits; then

(iv) the sum of Completed Inclusionary Units + BMR Credits is 175; and

(v) Developer will have met the Interim Affordable Percentage because the sum of Completed Inclusionary Units + BMR Credits (175) is equal to the Interim Affordable Percentage (175).

2.3. Development Process.

(a) Horizontal Improvements. Developer proposes to construct Horizontal Improvements for the 28-Acre Site in three Phases. The anticipated order of Phases is set forth in the Phasing Plan and the Schedule of Performance attached to the DDA, subject to revision in accordance with the DDA.

(b) Housing Data Table. To track Developer’s obligations under this Affordable Housing Plan, each Phase Submittal must include a Housing Data Table in a form reasonably acceptable to the Port. Port staff will review the Housing Data Table in accordance with the Horizontal Review Procedures. Each Housing Data Table must include the following information:

(i) the location and acreage of each Affordable Housing Parcel and each Market-Rate Parcel for the Current Phase and all Prior Phases and whether Developer proposes any changes from the Housing Map or previous approvals;

(ii) the number of BMR Credits that will be included in the Current Phase, and the number of BMR Credits that Developer has obtained for any Prior Phase; and

(iii) the anticipated location of each anticipated Residential Project in the Phase and, for any Market-Rate Project, the anticipated acreage, height and density, number of Residential Units, housing tenure (rental vs. ownership), and on- or off-site parking to be provided, including the proposed number and location of units to be designated in accordance with Zoning Administrator Bulletin 10, if known, of Inclusionary Units.

(c) Proposals to Change. Developer must provide notice to the Port in accordance with App ¶ 5 (*Notices*) of any anticipated change in the number or proposed location of Inclusionary Units from those identified in the Phase Submittal. The Port in consultation with MOHCD will approve the change if Developer can demonstrate, in the Port's reasonable judgment, that the changes would not interfere with Developer's ability to meet the Interim Affordable Percentage for the Current Phase. Developer must specify the final number of Inclusionary Units for any Market-Rate Project in the related Appraisal Notice.

(d) Restrictive Covenant. The required number of any Inclusionary Units will be specified in the Ground Lease and/or a Restrictive Covenant recorded against the Residential Parcel at Close of Escrow.

3. AFFORDABLE HOUSING PARCELS

3.1. Selection of Affordable Housing Parcels. Developer has preliminarily selected, and the Port and MOHCD have approved, Parcel C1B and Parcel C2A as the Affordable Housing Parcels on the 28-Acre Site. In consultation with MOHCD, the Port has also agreed that a portion of Parcel K South will be treated as an Affordable Housing Parcel. Parcel C1B, Parcel C2A, and Parcel K South are identified on the Housing Map.

3.2. Site Alteration Process.

(a) Developer Request. Developer may submit a request to the Port at any time to substitute an alternate parcel for any existing Affordable Housing Parcel or to make material changes to the size or boundaries of an Affordable Housing Parcel. Developer's request must be accompanied by: (i) a brief explanation as to why Developer is requesting the substitution or change; (ii) in the case of a substitution request, a demonstration that the parcel can support an equivalent number of affordable units; and (iii) if it can not support an equivalent number of affordable units, the number of BMR Credits that would be associated with the alternate parcel.

(b) Standard of Review. The Port will review Developer's request for parcel substitution or material change in consultation with MOHCD in accordance with this Subsection. If Developer seeks to reduce the size of any Affordable Housing Parcel because Developer does not need the BMR Credits allocated to the parcel to meet the Final Affordable Percentage (i.e., under a maximum office scenario), the Port and MOHCD may approve or disapprove the request, each in its sole discretion. The Parties agree that the factors listed below may inform, but will not limit, the Port's and MOHCD's decisions.

(i) BMR Credits. Whether Developer can meet the Final Affordable Percentage or Interim Affordable Percentage requirements if the change would decrease the number of BMR Credits.

(ii) Frontages. Each parcel must have a minimum of one frontage that provides immediate vehicular access in a manner consistent with the Design for Development and immediate pedestrian access to a Public ROW.

(iii) Fiscal Impact. The alternative parcel or material change should not have a material negative impact on the reasonably anticipated or proposed financing for the proposed substitute parcel when compared to the original parcel.

(iv) Location. The alternative parcel, when compared to the original parcel, maintains the overall balance of providing the Affordable Housing Parcels with access to transit, proximity to parks, and other public amenities.

(v) Site Conditions. The proposed substitution or material change should not result in a parcel that is materially more difficult or expensive to develop (e.g., sites

that include the need for extensive retaining walls, subsurface improvements, or ongoing monitoring responsibilities, or that cannot accommodate the contemplated parking or common areas).

(vi) Other Matters. The Port and MOHCD may consider any additional or unique matters that arise during the course of the development of the 28-Acre Site.

(c) Non-Material Changes. This Section does not apply to any non-material changes to the area or boundaries of an Affordable Housing Parcel that do not conflict with this Affordable Housing Plan, but Developer must obtain the Port's consent to any change in the area or boundaries of an Affordable Housing Parcel in accordance with the DDA.

3.3. Developer's Obligation to Complete Infrastructure.

(a) Required Improvements. Under the DDA, Developer must meet the Project Requirement to deliver Completed Affordable Housing Parcels suitable to accommodate not less than 327BMR Units. To meet this obligation, Developer will perform the following work with respect to each Affordable Housing Parcel (with such selection to be at Developer's option):

(i) Substantially Complete all Phase Improvements serving the parcel, whether located within or outside of its boundaries; or

(ii) provide appropriate guarantees, bonds, and public improvement agreements acceptable to the City and the Port to secure Developer's Substantial Completion of all Phase Improvements by the Affordable Housing Parcel Completion Date; or

(iii) make an election to pay MOHCD for the Affordable Housing Developer's costs of AHP Deferred Infrastructure pursuant to **Section 3.4** (Developer's Reimbursement Option).

(b) Required Completion Dates. Subject to Excusable Delay in accordance with the DDA, Developer shall meet the Affordable Housing Parcel Completion Date for:

(i) the first Affordable Housing Parcel within 18 months following City's Acceptance of the Horizontal Improvements for Phase 1 on the 28-Acre Site; and

(ii) the second Affordable Housing Parcel within 18 months following City's Acceptance of the Horizontal Improvements for Phase 2 on the 28-Acre Site; and

(iii) the third Affordable Housing Parcel within 18 months following City's Acceptance of the Horizontal Improvements for the Final Phase of development on the 28-Acre Site.

(c) Notice of Anticipated Completion. At least 6 months before the Affordable Housing Parcel Completion Date, Developer shall give the Port and MOHCD notice of the availability of the Affordable Housing Parcel.

(d) Phase Improvements. In addition to the requirements in **Subsection 3.3(a)** (Required Improvements), Developer shall Finally Complete all Phase Improvements (other than any AHP Deferred Infrastructure) serving the Affordable Housing Parcel in accordance with the DDA. Developer's obligation to Finally Complete the Phase Improvements (other than any AHP Deferred Infrastructure) will be secured by Phase Security as set forth in the DDA. The Port will include in any lease of the Affordable Housing Parcel that the tenant must provide to Developer required access for Developer's work, if any, on the Phase Improvements on condition that Developer's work does not materially interfere with or materially obstruct the Affordable Housing Developer's work to the maximum extent reasonably feasible and that the Affordable Housing Developer's work similarly does not materially interfere with Developer's work.

(e) Construction Coordination. Subject to **Section 3.4** (Developer's Reimbursement Option), Developer shall coordinate the construction of the Phase Improvements with the construction of the Affordable Housing Project to ensure that: (i) the Phase Improvements other than utility laterals serving the applicable Affordable Housing Parcel are Substantially Complete at or before the construction of the Affordable Housing Project is Finally Complete; and (ii) the utility laterals serving the applicable Affordable Housing Parcel are Substantially Completed in coordination with the construction of the Affordable Housing Project.

(f) No Other Developer Obligations. Developer's sole obligations with respect to development of Affordable Housing Projects on the Affordable Housing Parcels are the construction obligations under this Article. Under no circumstances will Developer have an obligation to contribute funds to MOHCD or any other person, even if available Housing Impact Fees and Housing Tax Increment are insufficient to fund construction of the Affordable Housing Projects on the Affordable Housing Parcels.

3.4. Developer's Reimbursement Option. In lieu of constructing all or a portion of Horizontal Improvements for any Affordable Housing Parcel, Developer may, in non-binding consultation with MOHCD, designate the same as AHP Deferred Infrastructure, which MOHCD will require the applicable Affordable Housing Developer to construct. Developer's election will be conditional upon entering into an agreement with MOHCD, in form reasonably satisfactory to MOHCD, in which Developer agrees to pay MOHCD for the costs of the AHP Deferred Infrastructure, as such costs are certified by MOHCD and submitted for reimbursement to the Developer.

4. AFFORDABLE HOUSING DEVELOPMENT

4.1. BMR Unit Production.

(a) MOHCD to Produce. MOHCD has agreed to coordinate with the Port to produce at least 327 BMR Units in the AHP Housing Area. MOHCD in its sole discretion will decide on the number of BMR Units to be constructed on each Affordable Housing Parcel, whether an Affordable Housing Project will be developed with Condo Units or Rental Units, the size of the BMR Units, whether the project will be targeted to a particular population (e.g., senior housing, housing for formerly homeless households), and the allocations of BMR Units among affordability levels.

(b) Number of BMR Credits. The number of BMR Units actually built on an Affordable Housing Parcel will not affect the number of BMR Credits that Developer received upon delivery of the Completed Affordable Housing Parcel.

(c) Number of BMR Units. The Parties currently contemplate that MOHCD will produce 100 Units on Parcel C1B, 100 BMR Units on Parcel C2A, and 121 BMR Units on Parcel K South. MOHCD will have the right to produce fewer or more BMR Units on an Affordable Housing Parcel if the number produced would not: (i) result in a reduction of rentable area below that required to produce 327 BMR Units in the AHP Housing Area; or (ii) require any material changes to the Phase Improvements serving the parcel.

(d) Environmental Review; Phase Submittal. Before MOHCD elects to produce more than the number of BMR Units specified in **Subsection 4.1(c)** (Number of BMR Units) in any Affordable Housing Parcel, MOHCD will (1) consult with the Planning Department to determine if the additional density would exceed the environmental analysis in the Final EIR and, if so, MOHCD will be solely responsible for undertaking any additional analysis required to comply with CEQA and implementing any required mitigation or improvement measures imposed as a condition to the additional density and (2) be solely responsible for processing an amendment to the applicable Phase Submittal allowing for additional units in the Phase, and satisfying all conditions of approval to such amendment, so that the increase in BMR Units does

not result in a decrease in the number of residential units permitted on any other parcel in such Phase.

4.2. Uses of Affordable Housing Parcel. Unless Developer, the Port, and MOHCD, each in its respective sole discretion, agrees otherwise, the Affordable Housing Parcels must be used only for production of BMR Units and ancillary community-serving, neighborhood retail or parking spaces within an Affordable Housing Project.

4.3. Compliance with Ground Lease. Each Affordable Housing Project will be developed under a ground lease between the Port and the Affordable Housing Developer.

4.4. Release from Master Lease. Prior to the commencement of any ground lease between the Port and the Affordable Housing Developer, Developer and Port will execute a written release of the Master Lease between Developer and Port with respect to the applicable Affordable Housing Parcel.

5. HOUSING PROGRAM

5.1. Conveyance Agreements. In accordance with the DDA, the Port will convey fee title to or a leasehold interest in the parcel to each Vertical Developer of a Market-Rate Parcel. Each conveyance agreement will be substantially in one of the forms attached to the DDA and, among other things, will: (a) specify the maximum number of Market-Rate Units allowed to be developed on the Market-Rate Parcel; (b) require the recordation of a Restrictive Covenant setting forth the Inclusionary Obligation in accordance with **Subsection 6.1(f)** (Restrictive Covenant) as a condition to Close of Escrow of any Market-Rate Rental Project; and (c) require the Vertical Developer of any Market-Rate Condo Project to pay the 28-Acre Site Affordable Housing Fee in accordance with **Section 6.2** (Market-Rate Condo Projects).

5.2. Vertical Developer Discretion. Vertical Developers will be able to decide on the number, size, and type of Residential Units constructed, subject to any applicable limitations in the Regulatory Requirements, any applicable Restrictive Covenant, and its conveyance agreement.

6. INCLUSIONARY HOUSING REQUIREMENTS

6.1. Market-Rate Rental Projects.

(a) Development. Twenty percent of all Residential Units in each Market-Rate Rental Project must be Inclusionary Units rented at a level affordable to households with incomes between 55% and 110% of Area Median Income, and not to exceed a maximum average of 80% of Area Median Income in each building (referred to herein as the “**Inclusionary Obligation**”).

(b) Financing. Vertical Developers are responsible for financing the development of the Inclusionary Units included within their Market-Rate Rental Projects and may access financing sources such as 4% LIHTCs, tax-exempt bond proceeds, and other sources of below-market-rate housing financing, to the extent the Market-Rate Rental Project qualifies for any available financing. The City has no obligation to provide any funding to Vertical Developers under this Affordable Housing Plan. Residential Units that are financed with 4% LIHTCs will count as Inclusionary Units but will not be subject to any restrictions or monitoring by MOHCD except as set forth in Planning Code sections 415.8 and 415.9.

(c) Procedures for Monitoring and Enforcement.

(i) Subject to **clause (ii)** of this Subsection, procedures for renting an Inclusionary Unit must conform to the *City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual*, a current copy of which is attached as **AHP Attachment B**, subject to any update in effect when Inclusionary Units in the Market-Rate Rental Project are available for rent to the extent such update

does not result in a Material Change (as defined in the Development Agreement) (the “**MOHCD Manuals**”).

(ii) To the extent that the MOHCD Manual is inconsistent with or conflicts with this Affordable Housing Plan, this Affordable Housing Plan will prevail. Accordingly, MOHCD agrees that a Vertical Developer of a Market-Rate Rental Project may proceed under the following provisions.

(1) All Inclusionary Units must be on the 28-Acre Site. The Vertical Developer will have no in-lieu payment, off-site, or land dedication option.

(2) All Inclusionary Units must be affordable to households with household incomes of between 55% and 110% of Area Median Income, subject to meeting an average of the Maximum Inclusionary AMI at each Market-Rate Rental building.

(3) Units shall be designated in accordance with Zoning Administrator Bulletin 10

(4) Bundling of parking with an Inclusionary Unit will be prohibited, as set forth in **Section 8.1** (Unbundling). Parking spaces shall be made available to households renting Inclusionary Units at the same ratio of parking spaces to Residential Units for the 28-Acre Site Project overall.

(5) The maximum monthly parking rate for an Inclusionary Unit will be equal to the ratio of the Inclusionary Unit’s rent as compared to rent for an equivalent (determined by factors including square footage, number of bedrooms, and location within the building) Market-Rate Unit. For example, if the equivalent Market-Rate Unit’s monthly rent is \$3,000 and the Inclusionary Unit’s monthly rent is \$1500, the permitted parking rate for a tenant in the Inclusionary Unit would be 50% of market-rate parking rate. Parking rates may be adjusted in concert with market rate adjustments, but no more than annually.

(d) Marketing. A Vertical Developer may not market or rent Inclusionary Units until MOHCD has approved, in its reasonable discretion, the following: (i) Marketing and Operations Guidelines, which must include any preferences required by the MOHCD Manual or this Affordable Housing Plan; (ii) conformity of the proposed Affordable Housing Cost for Inclusionary Units with this Affordable Housing Plan; and (iii) project-specific eligibility and income qualifications for tenant households (collectively “**Marketing and Operations Guidelines**”).

(e) Marketing and Operations Guidelines.

(i) After the Port notifies MOHCD of the first Phase Submittal, MOHCD shall commence to develop and diligently pursue completion of area- or project-wide Marketing and Operations Guidelines for use by each Vertical Developer of a Market-Rate Rental Project at the 28-Acre Site.

(ii) If these project-wide Marketing and Operations Guidelines are not in place within 90 days before the date that any Vertical Developer expects to begin marketing Inclusionary Units, then that Vertical Developer of a Market-Rate Rental Project shall be responsible for submitting its own proposed Marketing and Operations Guidelines to MOHCD. MOHCD will review and grant or withhold its approval of each set of Marketing and Operations Guidelines in its reasonable judgment within 30 days after it is delivered. If MOHCD does not respond in the initial 30-day period, the Vertical Developer may submit to MOHCD a second request for approval, and the Marketing and Operations Guidelines will be deemed approved if MOHCD does not respond within 30 days after the second request.

(f) Restrictive Covenant. Each Restrictive Covenant for a Market-Rate Parcel to be developed as a Market-Rate Rental Project must include the following.

(i) the total number of Residential Units and the number of Inclusionary Units that the Vertical Developer intends to build on the Market-Rate Parcel;

(ii) a statement that the term of the Inclusionary Obligation is for the life of the Market-Rate Rental Project; and

(iii) a covenant to keep the Inclusionary Units as Rental Units for the term of the Inclusionary Obligation.

6.2. Market-Rate Condo Projects.

(a) Payment of 28-Acre Site Affordable Housing Fee. No on-site Inclusionary Units will be permitted in any Market-Rate Condo Project on the 28-Acre Site. Instead, each Vertical Developer of a Market-Rate Condo Project shall pay a fee in lieu of providing Inclusionary Units on-site (the “**28-Acre Site Affordable Housing Fee**”). In consideration of these requirements, the City has waived the collection of fees under Section 415 from the 28-Acre Site.

(b) Calculation of Fee.

(i) Affordable Housing Fees under Section 415 currently vary by unit size and number of bedrooms and are listed in the Inclusionary Housing Program Fee Schedule. The City has directed the Controller, in consultation with the Inclusionary Housing Technical Advisory Committee, to conduct a study to examine the appropriate amount and application of the Inclusionary Affordable Housing Fee under Section 415, and the Board of Supervisors may be adopting changes to the Fee Schedule in 2018.

(ii) .The 28-Acre Site Affordable Housing Fee rate will be \$79/gsf. This fee is equivalent to 28% of the number of Residential Units to be developed in the Market-Rate Condo Project based on the amounts currently charged under Section 415, as noted on the San Francisco Citywide Development Impact Fee Register effective as of January 1, 2017. For example, under a 28% fee requirement, a typical 100 unit project in which at least 15% of its units have two bedrooms and at least 10% of its units have three bedrooms, would be required to pay \$9,263,699 in 2017 dollars. Based on an average unit size of 1040 gsf per unit, this figure translates into a rate of \$79 per gsf of residential use.

(iii) The 28-Acre Site Affordable Housing Fee rate will be adjusted annually in accordance with Section 409, based on the Annual Infrastructure Construction Cost Inflation Estimate (AICCE) published by Office of the City Administrator’s Capital Planning Group and approved by the Capital Planning Committee. No other adjustments to fees under Section 415 will apply to the 28-Acre Site. The Port will collect (or require evidence of prior payment of) 28-Acre Site Affordable Housing Fees from the Vertical Developer of any Market-Rate Condo Project as a condition to issuance of the first construction permit.

(c) Use of Fees. MOHCD will use all 28-Acre Site Affordable Housing Fees collected by the City as set forth in **Section 7.4** (MOHCD’s Rights and Obligations).

(d) MOHCD Role. MOHCD will monitor and enforce the Inclusionary Obligation in accordance with Planning Code section 415.9 and section 415(c)(4)(C)-(D) if applicable, except that all references to Section 415 will be deemed to refer to the requirements under this Section.

7. FINANCING AFFORDABLE HOUSING PROJECTS

7.1. Affordable Housing Parcels. As described in **Section 3.3** (Developer's Obligation to Complete Infrastructure), Developer will complete Horizontal Improvements serving the Affordable Housing Parcels at its own cost, subject to **Section 3.4** (Developer's Reimbursement Option). In addition, the Port will ground lease each of the Affordable Housing Parcels to MOHCD or an Affordable Housing Developer at no cost to facilitate the development of the Affordable Housing Projects.

7.2. Housing Impact Fees. The City and the Port will make the following Impact Fees generated by vertical development in the 28-Acre Site available to MOHCD for the development of Affordable Housing Projects on the Affordable Housing Parcels.

(a) 28-Acre Site Affordable Housing Fees. The development of Market-Rate Condo Projects in the 28-Acre Site will generate 28-Acre Site Affordable Housing Fees, as provided in **Section 6.2** (Market-Rate Condo Projects).

(b) 28-Acre Site Jobs/Housing Equivalency Fees. As set forth in the Development Agreement and the form of Vertical DDA, each Vertical Developer of a Market-Rate Commercial Project within the 28-Acre Site will be required to pay the 28-Acre Site Jobs/Housing Equivalency Fee to the City before the Chief Harbor Engineer issues the first construction permit for its site.

7.3. Housing Tax Increment. The City has formed the IRFD over the Hoedown Yard to generate Housing Tax Increment for the development of the Affordable Housing Projects.

7.4. MOHCD's Rights and Obligations.

(a) Allocated Funds. Subject to **Subsection 7.4(c)** (Reimbursement of Advances), MOHCD will use Housing Impact Fees and Housing Tax Increment to construct the Affordable Housing Projects on the Affordable Housing Parcels.

(b) Reallocation of Funds. MOHCD will have the right to reallocate Housing Impact Fees and Housing Tax Increment to any other affordable housing project in San Francisco on condition that MOHCD replaces the reallocated funds with an equal amount from other sources when needed for the development of the Affordable Housing Projects on the Affordable Housing Parcels.

(c) Reimbursement of Advances. If MOHCD in its sole discretion elects to advance funds for the development of the Affordable Housing Projects on the Affordable Housing Parcels before Housing Impact Fees and Housing Tax Increment are available, MOHCD will have the right to be reimbursed from Housing Impact Fees and Housing Tax Increment as those funds become available.

8. PARKING REQUIREMENTS; RESIDENTIAL UNIT SIZE REQUIREMENTS

8.1. Unbundling. All parking spaces serving Market Rate Residential Buildings must be unbundled and offered for purchase or rent separately from any Residential Unit in the 28-Acre Site. Vertical Developers will have the sole discretion to determine whether parking spaces in a Market-Rate Project are available for rent or purchase. MOHCD will have the sole discretion to determine whether parking spaces in an Affordable Housing Project are available for rent or purchase.

8.2. Parking Charge.

(a) Discretion to Set Rates. Each Vertical Developer of a Market-Rate Parcel and MOHCD for each Affordable Housing Parcel will determine, each in its sole discretion, the Parking Charge for parking spaces serving the parcel, subject to **Subsection 8.2(b)** (Limitations on Rates).

(b) Limitations on Rates. Vertical Developers must not charge renters of Inclusionary Units any fees, charges or costs, or impose rules, conditions or procedures on such renters, that do not equally apply to all market-rate renters.

8.3. Parking Allotment. No more than 0.25 parking spaces per Residential Unit may be developed on any Affordable Housing Parcel in the 28-Acre Site.

8.4. Residential Unit Size. At least 30% of all Residential Units constructed in the AHP Housing Area will be either 2-bedroom or 3-bedroom Residential Units, and at least 5% of the required 2-bedroom and 3-bedroom Residential Units will be 3-bedroom Residential Units. Compliance will be tracked by phase, and shall be cumulative across all phases. To verify compliance, each phase submittal to the Port will indicate the required percent of 2 bedroom or 3 bedroom units to be achieved on each parcel (excluding the Affordable Housing Parcels), and subsequent Appraisal Notices and VDDAs for each parcel shall require such percentages accordingly. For Phases 1 and 2, the Phase Submittal may fall behind this minimum ratio for proposed and previously approved units by up to 10%.

9. OUTREACH PROGRAMS

9.1. District 10. Given the 28-Acre Site's location within San Francisco's District 10, pre-marketing and marketing programs for Inclusionary Units in the Market-Rate Projects must target residents of District 10 to the greatest extent permitted by MOHCD's then-applicable 27% policies and procedures. In addition, the residents of District 10 will be given the maximum neighborhood preference for leasing Inclusionary Units permitted under MOHCD's then-applicable policies and procedures.

9.2. Potrero Terrace and Annex. The Parties desire that certain BMR Units may be offered to households currently living at the public housing developments known as Potrero Terrace and Potrero Annex, or other public housing sites undergoing reconstruction to support the phased redevelopment of these sites as part of the City's Hope SF program. In that case, development, leasing, and management of such designated units within the Affordable Housing Project will be subject to 24 CFR Part 983 and other applicable federal rules and regulations governing the use of project-based vouchers.

9.3. Housing for Special Populations. The Parties may agree to target a limited number of either BMR Units or Inclusionary Units towards special populations, such as educators, artists, or formerly homeless individuals. In the case of Inclusionary Units, the Parties may execute an addendum adjusting the AMI requirements above the limits contained in this Affordable Housing Plan if needed to better target such populations.

10. MISCELLANEOUS

The following provisions apply to this Development Agreement in addition to those in **Appendix Part A** (Standard Provisions and Rules of Interpretation).

10.1. Third-Party Beneficiaries. The Parties agree that MOHCD is a third-party beneficiary of this Affordable Housing Plan, with the same rights and obligations as if it were a party. Except to the extent set forth in the immediately preceding sentence, there are no express or implied third-party beneficiaries of this Affordable Housing Plan.

10.2. Notices to MOHCD. Notices given under this Affordable Housing Plan are governed by App ¶ 5 (Notices). Notices to MOHCD must be addressed as specified below.

To MOHCD:

Mayor's Office of Housing and Community
Development

With a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn:

10.3. Attachments. The attachments listed below are incorporated in and are a part of this Affordable Housing Plan.

AHP Attachment A: Housing Map
AHP Attachment B: City and County of San Francisco Inclusionary Affordable Housing
Monitoring and Procedures Manual
AHP Attachment C: Initial In-Lieu Fee Rate Schedule