



Doc # **2022083565**

Recording Requested by:

Port of San Francisco

When Recorded Mail to:

FC Pier 70, LLC
Brookfield Properties
685 Market Street, Suite 500
San Francisco, CA 94105
Attn: Swathi Bonda

**City and County of San Francisco
Joaquin Torres, Assessor – Recorder**

9/1/2022	9:49:54 AM	Fees	\$0.00
Pages 13	Title 461	Taxes	\$0.00
Customer 047	AM	Other	\$0.00
		SB2 Fees	\$0.00
		Paid	\$0.00

Exempt from recording fees under Government Code §27383

Assessor Parcel Number (APN): 4111-009; 4052-008; 4112-001; 4112-002; 4112-003; 4113-002; 4113-003; 4114-005; 4114-007; 4052-009; 4116-008; 4052-010; 4052-011; 4116-009; 4115-003; 4117-002; 4117-003; 4052-012; 4115-004; 3941-042; 4052-002; 4052-003; 4052-004; 4111-005; 4114-001; 4111-006; 4113-001; 4111-007; 4114-002; 4114-003; 4114-004; 4052-005; 4052-006; 4052-007; 4116-001; 4116-002; 4116-003; 4116-004; 4116-005; 4116-006; 4115-001; 4115-002; 4117-001; 4116-007

Address: Port Areas, Pier 70, San Francisco, CA

FIRST AMENDMENT TO PIER 70 DDA

(Please fill in Document Title(s) above this line)

This document is exempt from the \$75 Building Homes and Jobs Act Fee (per Government Code §27388.1(a)(2)(D) because the document is a real estate instrument, paper, or notice executed or recorded by the state or any county, municipality, or other political subdivision of the state.

FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT
(Self-Warranty)

This FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (this “**First Amendment**”) is made as of this 7th day of July, 2022, by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”) and **FC PIER 70, LLC**, a Delaware limited liability company (“**Developer**”). Each of the Port and the Developer is referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Port and Developer, entered into that certain Disposition and Development Agreement, dated as of May 2, 2018, recorded in the official real estate records of the City (the “**Official Records**”) as of May 25, 2018, as Instrument No. DOC-2018-K619435-00, as subsequently revised by that certain First Memorandum of Technical Corrections, recorded in the Official Records on September 12, 2019 as Document No. 2019-K830531-00, and that Second Memorandum of Technical Corrections, recorded in the Official Records on January 16, 2020 as Document No. 2020-K891134-00 (as revised, the “**DDA**”);

WHEREAS, all capitalized terms used but not otherwise defined herein shall have their meanings as set forth in the DDA; and

WHEREAS, the Parties now wish to amend the DDA to address the reimbursement of costs incurred in connection with warranty obligations arising under the Public Improvement Agreement (Pier 70 28-Acre Site Project) by and among the City, Port, and Developer, dated as of September 15, 2020, recorded Official Records as of October 23, 2020, as Instrument No. DOC-2020035281 (the “**Phase 1 PIA**”).

AGREEMENT

NOW, THEREFORE, for the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Port and Developer hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Pre-Acceptance Liability, Maintenance, and Repair**. The Parties acknowledge that Developer shall have all responsibility for liability, maintenance, and repair of the Phase 1 Required Infrastructure prior to Acceptance (as defined in the Phase 1 PIA) in accordance with Section 7(a) of the Phase 1 PIA.
3. **Amendment**.
 - a. **Definitions in Appendix**.

i. The definition of “**Horizontal Development Costs**” in the Appendix is hereby amended by amending and restating (v) and (vi) and adding the following as (vii):

(v) Associated Public Benefits;

(vi) costs associated with implementing the DDA, including any additional costs that the Parties have agreed shall be incurred by the Developer for the Project; and

(vii) the Hard Costs and Soft Costs to correct, repair or replace defects to the Phase 1 Required Infrastructure during the Phase 1 Self-Warranty Period to the extent:

(X) such costs are not covered by the Plant Warranty;

(Y) in the event such costs are associated with a latent defect claim, such costs will not be considered Horizontal Development Costs to the extent Developer recovers such costs from Plant or other responsible party; and

(Z) the item needing correction, repair or replacement in the Required Infrastructure was built in accordance with approved Improvement Plans.”

ii. The following definitions are added to the Appendix:

“**Phase 1 PIA**” means the Public Improvement Agreement (Pier 70 28-Acre Site Project) by and among the City, Port, and Developer, dated as of September 15, 2020, recorded Official Records as of October 23, 2020, as Instrument No. DOC-2020035281.

“**Phase 1 Required Infrastructure**” is the “Required Infrastructure” as defined in the Phase 1 PIA.

“**Phase 1 Self-Warranty Period**” means the period commencing upon the expiration of the Plant Warranty and expiring upon the expiration of the Phase 1 Warranty Period.

“**Phase 1 Warranty Period**” is the “Warranty Period” as defined in the Phase 1 PIA.

“**Plant**” means Plant Construction Company, L.P., the general contractor for the Phase I Horizontal Improvements.

“**Plant Warranty**” means the warranty provided by Plant Construction Company, L.P. commencing upon substantial completion of Phase 1 (which was on or about April 30, 2021) of the Required Infrastructure.

b. Self-Warranty. Section 15.9 of the DDA is amended by adding the following language at the end of the section.

“Developer shall warranty the Phase 1 Required Infrastructure for the Phase 1 Self-Warranty Period. During the Phase 1 Self-Warranty Period, Developer will promptly notify the Port regarding any warranty claims that arise under the Phase 1 PIA and will conduct and coordinate any correction, repair, or replacement of any defects to the Phase 1 Required Infrastructure discovered during the Phase 1 Self-Warranty Period. For the Port’s information, the parties shall cooperate in tracking Horizontal Development Costs incurred by Developer in connection with its correction, repair or replacement of defects to the Phase 1 Required Infrastructure during the Phase 1 Self-Warranty Period.”

c. Change in State Law. In order to reflect changes in state law, the indented paragraph in Section 9.6(b), for the purposes of the DDA, is hereby deleted in its entirety and replaced with the below.

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

Developer’s Initials: _____



d. Changes in City Laws. In order to reflect changes in City law, (i) Sections 8(c), 15, and 23 of Exhibit A7 of the DDA are hereby deleted in their entirety and replaced with the below, and (ii) Sections 25 and 26 of Exhibit A7 of the DDA are hereby incorporated in their entirety.

“8. *Tobacco Products and Alcoholic Beverages.*
(Admin. Code § 4.20; Health Code art. 19K)

(c) Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Developer acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the FC Project Area during the DDA Term and such prohibition must be included in all sublicenses or other agreements allowing use of the FC Project Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.”

“15. ***Bottled Drinking Water.***

(Env. Code ch. 24; Port Reso. No. 12-11)

Developer is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at Events held on City Property with attendance of more than 100 people during the DDA Term, except as otherwise set forth in Environmental Code Chapter 24. Also, Developer must comply with the Port's Zero Waste Policy for Events and Activities (Port Reso. No. 12-11) for applicable Events at the FC Project Area during the DDA Term.”

“23. ***Contribution Limits-Contractors Doing Business with the City.***

(Campaign and Gov'tl Conduct Code§ 1.126)

(a) Application. Campaign and Governmental Conduct Code section 1.126 ("Section 1.126") applies only to agreements subject to approval by the Board of Supervisors, the Mayor, any other elected officer, or any board on which an elected officer serves. Section 1.126 prohibits a person who contracts with the City for the sale or lease of any land or building to or from the City from making any campaign contribution to: (i) the City elective officer, (ii) a candidate for the office held by such individual, or (iii) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved.

(b) Acknowledgment. Through its execution of the DDA, Developer acknowledges the following.

(i) Developer is familiar with Section 1.126.

(ii) Section 1.126 applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more.

(iii) If applicable, the prohibition on contributions applies to: (1) Developer; (2) each member of Developer's board of directors, and Developer's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; (3) any person with an ownership interest of more than ten percent (10%) in Developer; and (4) any subcontractor listed in the Developer's bid or contract.

(iv) Additionally, Developer acknowledges that if this Section 23 applies, Developer must inform each of the persons described in subsection (iii) of the prohibitions contained in Section 1.126.”

“25. ***Developer's Compliance with City Business and Tax Regulations Code.***

(Bus & Tax Reg. Code ch. 6)

Developer acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the Port to withhold payments the Port is required to make under this DDA to Developer, if Developer is delinquent in the payment of any amounts that it is required to pay the City under the San Francisco Business and Tax Regulations Code. If the Port withholds its required payments under this DDA as required to by the City Treasurer or Tax Collector, then Port will not be in breach or default under this DDA. If such amounts are withheld, the Port shall release any payments withheld under this Section 25 to Developer, without interest, late fees, penalties, or other charges, as soon as such release would not constitute a violation of Section 6.10-2 of the San Francisco Business and Tax Regulations Code. “

- e. FEMA Disclosure. Developer represents and warrants to Port that Developer has received and reviewed the FEMA disclosure notice attached as DDA *Schedule 6*.
4. Entire Agreement. This First Amendment, and the DDA, contain all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this First Amendment are superseded in their entirety by this First Amendment. No prior drafts of this First Amendment or changes between those drafts and the executed version of this First Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this First Amendment.
5. Agreement Unmodified; Amendments. Except as expressly set forth in this First Amendment, the Agreement shall remain unmodified and in full force and effect, and is hereby affirmed and ratified. No amendment to the DDA nor this First Amendment or any part thereof shall be valid unless it is in writing and signed by all of the parties thereto. In the event of any inconsistency between the terms of the DDA and the terms of this First Amendment, the terms of this First Amendment shall govern and control in all respects. All references to the DDA shall be deemed references to the DDA as amended hereby.
6. Severability. If any provision of this First Amendment or the application thereof to any person, entity or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this First Amendment, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this First Amendment shall be valid and be enforceable to the fullest extent permitted by law.
7. Counterparts. For convenience, the signatures of the parties to this First Amendment may be executed and acknowledged on separate pages which, when attached to this First Amendment, shall constitute as one complete First Amendment. This First Amendment may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same First Amendment.
8. Relationship of the Parties. Port is not, and none of the provisions in this First Amendment shall be deemed to render Port, a partner in Developer’s business, or joint venturer or member

in any joint enterprise with Developer. Neither party shall act as the agent of the other party in any respect hereunder. This First Amendment is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

9. **California Law; Venue.** This First Amendment and the DDA are governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this First Amendment and/or the DDA shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this First Amendment and/or the DDA has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.
10. **Successors; No Third Party Beneficiaries.** The terms, covenants, agreements and conditions set forth in this First Amendment shall bind and inure to the benefit of Port and Developer and, except as otherwise provided herein, their personal representatives and successors and assigns. This First Amendment is made for the purpose of setting forth certain rights and obligations of Developer and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the last date set forth below.

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

By: 
Name: James Ostrom
Title: Authorized Signatory
Date signed: 7/6/2022

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

By: _____
Elaine Forbes,
Executive Director

Date signed: _____

Approved as to Form: **DAVID CHIU**, City Attorney

By: _____
A. Mathai-Jackson, Deputy City Attorney

First Amendment Prepared By: Christine Maher, Development Project Manager _____ (initial)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

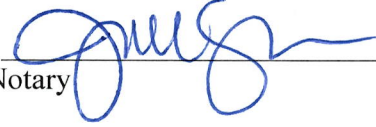
STATE OF CALIFORNIA)
) ss.
COUNTY OF San Francisco)

On July 6, 2022 before me, Julie Garduno, Notary Public,

personally appeared James Ostrom, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary  (Seal)



IN WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the last date set forth below.

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


By: _____

Name: _____

Title: _____

Date signed: _____

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

By:  _____

Elaine Forbes,
Executive Director

Date signed: 8/30/22

Approved as to Form: **DAVID CHIU**, City Attorney

By:  _____
A. Mathai-Jackson, Deputy City Attorney

First Amendment Prepared By: Christine Maher, Development Project Manager CM (initial)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Francisco

On August 30th, 2022 before me, Srira Zadmehran, Notary Public,

personally appeared Elaine Forbes, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Srira Zadmehran (Seal)
Notary



DDA SCHEDULE 6

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for

Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City's Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:

<https://onesanfrancisco.orgisan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:

www.FloodSmart.gov.