

DDA Exhibit D2



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

FORM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

([PIER 70] – [DESCRIBE PARCEL])

BETWEEN THE

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

AND

_[VERTICAL DEVELOPER]

DATED AS OF _____, 201[___]

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

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

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Exhibits and Schedules:

Exhibit A	Real Property Description
Exhibit B	Vertical Project Description
Exhibit C	[Form of Quitclaim Deed—will need to include re-purchase right if fail to commence construction within XX months] [Form of Parcel Lease]
Exhibit XX	Restrictive Covenants
Exhibit XX	Notice of Transfer Fee Covenant
Exhibit XX	Transfer Fee Covenant
Exhibit XX	Notices of Special Tax

- Exhibit XX CFD and Assessment Matters
- Exhibit XX Form of License
- Exhibit XX Vertical Developer Representations and Warranties
- Exhibit XX Workforce Development Plan
- Exhibit XX Horizontal DDA Release Form
- Exhibit XX Partial Termination of Master Lease
- Exhibit XX **[If applicable: Deferred Infrastructure**
- Exhibit XX Form of Engineer's Certificate and Form of Architect's Certificate
- Exhibit XX Form of Certificate of Completion
- Exhibit XX Scope of Development and Schedule of Performance **[only for residential fee parcels]**
- Exhibit XX City and Port Special Provisions

SCHEDULES

- Schedule 4.2 Port Disclosure Matters
- Schedule 15.3 Remedies for Failure to Commence Construction **[only for residential fee parcels.]**
- Schedule 16 Financing Provisions **[only for fee parcels]**
- Schedule 18.1 Hazardous Materials Indemnity **[only for fee parcels]**
- Schedule 19.4 Port's Share of Net Transfer Proceeds **[only for FC Affiliate fee parcels]**

FORM VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT([Pier 70] – **DESCRIBE PARCEL**)

THIS VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Agreement**”) dated for reference purposes only as of _____, 20____, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), operating by and through the San Francisco Port Commission (“**Port**”), _____, and a _____ (“**Vertical Developer**”). All Exhibits and Schedules attached hereto are hereby incorporated by reference into this Agreement and will be construed as a single instrument and referred to herein as this “**Agreement.**” Initially capitalized terms in this Agreement are defined in **Article 23**.

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port owns certain real property located in the City and County of San Francisco consisting of approximately _____ square feet of unimproved land, as more particularly described on **Exhibit A** attached hereto (as may be refined and adjusted in accordance with the terms of this Agreement, the “**Property**”). The Property is located within an approximately 28-acre area located in the southeast corner of Pier 70 (the “**28-Acre Site**”) as more particularly described in that certain Disposition and Development Agreement dated _____, 2017, by and between FC Pier 70, LLC, a Delaware limited liability company (“**Horizontal Developer**”) and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Horizontal DDA**”) and that certain Master Lease dated [____], 2017, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Lease**”). The boundaries of the Property may be refined and adjusted with the advancement of the 28-Acre Site development as set forth in **Section 3.1(d)**.

B. Under the Horizontal DDA and the Master Lease, Port has agreed to convey by sale or ground lease those certain Development Parcels (as defined in the Horizontal DDA) in accordance with the terms thereof. The Property is a Development Parcel under the Horizontal DDA, within Phase [XX] of development thereunder.

C. Planning Code Section **249.XX** (the Pier 70 Special Use District) (as amended from time to time, the “**SUD**”) establishes the basic land use standards for vertical development within the Phase and sets forth the process and requirements for review and approval of design and construction documents related to Vertical Development. As authorized under the SUD, the Port and the Planning Commission approved the Pier 70 Design for Development dated [_____, 2017], as amended from time to time (the “**Design for Development**”), that sets forth design standards and design guidelines that will apply to all Vertical Development within the Phase.

D. On _____, 201_, the Port approved a Phase [XX] Submittal (the “**Phase Submittal**”) that set forth the approved development program for the development of Phase [XX], as described therein and consistent with the Horizontal DDA, including, among other things, (i) Horizontal Developer’s obligations with respect to the construction of certain Horizontal Improvements, (ii) the development plan for Phase [XX], including affordable housing and park and open space requirements, and (iii) certain other associated public benefits to be provided in Phase [XX].

E. [Include additional Recitals that describe the parcel disposition process as provided under the Horizontal DDA, and any other relevant facts and circumstances leading up to execution of this VDDA]

F. [for commercial parcels: Subject to the terms and conditions of this Agreement, Vertical Developer desires to option and thereafter to ground lease the Property and Port is willing to grant an option and thereafter ground lease the Property on the terms and conditions set forth herein.]

[for residential parcels: Subject to the terms and conditions of this Agreement, Vertical Developer desires to [for fee parcels: purchase] [for ground lease parcels: ground lease] the Property and Port is willing to [for feel parcels: sell] [for ground lease parcels: ground lease] the Property on the terms and conditions set forth herein.]

G. Vertical Developer proposes to construct the project generally described in *Exhibit B* (as the same may be modified from time to time in accordance with the terms hereof, the “Vertical Project”) under the terms of this Agreement. The term “Vertical Project” includes the Deferred Infrastructure. In connection with the Vertical Project, Vertical Developer is obligated to provide certain public benefits, as more particularly set forth herein, including [insert as appropriate: [providing Inclusionary Units]; [on-site child-care facilities]; [assuming the obligation to construct Deferred Infrastructure obligations] [other obligations]] and to comply with all applicable requirements of the Workforce Development Plan, the Mitigation Monitoring and Reporting Program and the Special Provisions.

H. The parties now desire to enter into this Agreement to set forth the terms and conditions upon which Port will deliver [for ground lease parcels: a leasehold estate] [for feel parcels: a fee interest] in the Property to Vertical Developer and Vertical Developer will develop the Vertical Project.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Port and Vertical Developer hereby agree as follows:

AGREEMENT

1. CONVEYANCE OF PROPERTY.

Subject to the terms, covenants and conditions set forth herein, Port agrees to [for fee parcels: sell] [for ground lease parcels: ground lease on the terms substantially in the form set forth in the lease attached hereto as *Exhibit XX*, subject to mutually agreed upon modifications (“Parcel Lease”)] to Vertical Developer, and Vertical Developer agrees to [for fee parcels: purchase] [for ground lease parcels: ground lease on the terms set forth in the Parcel Lease] from Port, Port’s interest in the Property.

2. ACQUISITION PRICE.

2.1. Acquisition Price. The [for fee parcels: acquisition price for the Property] [for ground lease parcels: consideration due Port from Vertical Developer under the terms of the Parcel Lease on the Closing Date] is _____ and ___/100 Dollars (\$ _____) (the “Acquisition Price”).

2.2. Payment of Acquisition Price; Deposit. Vertical Developer will pay Port the Acquisition Price as follows:

(a) [For residential parcels: **Deposit.** On or prior to the Effective Date, Vertical Developer will make an earnest money deposit in an amount equal to ten percent (10%) of the Acquisition Price (the “Deposit”).] [for commercial parcels: **Initial Deposit.** On or prior to the Effective Date, Vertical Developer will make an earnest money deposit in an amount equal to ten percent (10%) of [for prepaid commercial leases: the Acquisition Price][for hybrid commercial leases: [insert amount that is ten percent (10%) of the present value of the Premises]](the “Initial Deposit”).]

”

(b) **[for commercial leases. Additional Deposit.** If Vertical Developer elects to extend the Target Closing Date in accordance with *Section 7.3(a)*, then on the Target Closing Date, Vertical Developer will make an additional deposit in an amount equal to ten percent (10%) of **[for prepaid commercial leases: the Acquisition Price] [for hybrid commercial leases: [insert amount that is ten percent (10%) of the present value of the Premises]** (the “**Additional Deposit**”). The Initial Deposit and the Additional Deposit are collectively referred to as the “**Deposit**.” If there is no Additional Deposit, then the Initial Deposit may also be referred to as the “**Deposit**.”]

(c) Before expiration of the Contingency Period, the Deposit will be refundable to Vertical Developer only if this Agreement is terminated in accordance with *Section 6.2*. After expiration of the Contingency Period, the Deposit is non-refundable to Vertical Developer except as set forth in *Sections 6.3(b), 8.1, 10.2* or *Section 10.4*. The Deposit will be credited against the Acquisition Price at Closing.

[for non-Credit Bid deals only: Vertical Developer will deliver the Deposit into escrow with [insert name of Title Company] (the “**Title Company**” or “**Escrow Agent**”). The Deposit will be held in an interest-bearing account, and all interest thereon will be deemed a part of the Deposit.] The Deposit (including interest thereon) will be applied to the Acquisition Price payable to Port [for sale parcels: at the consummation of the purchase and sale contemplated hereunder] [for ground lease parcels: upon the mutual execution and delivery of the Parcel Lease as contemplated hereunder] (the “**Closing**” or the “**Close of Escrow**”).

[for Credit Bid deals only: Each Deposit will be applied by Credit Bid on the date it is due. The Deposit will be refundable to Vertical Developer only if this Agreement is terminated in accordance with *Section 6.2* before expiration of the Contingency Period, or after expiration of the Contingency Period, in accordance with *Section 6.3(b), 8.1, or Section 10.2* or *Section 10.4(a)* The Acquisition Price less the Deposit will be applied by Credit Bid [for sale parcels: at the consummation of the purchase and sale contemplated hereunder] [for ground lease parcels: upon the mutual execution and delivery of the Parcel Lease as contemplated hereunder] (the “**Closing**” or the “**Close of Escrow**”)]

(d) **Independent Consideration.** Notwithstanding any provision of this Agreement to the contrary, upon any early termination of this Agreement where Vertical Developer is entitled to a refund of the Deposit, the Escrow Agent will deduct from the Deposit the sum of One Thousand Dollars (\$1,000) (the “**Independent Contract Consideration**”) and deliver such Independent Contract Consideration to Port, which amount the parties bargained for and agree to as consideration for Vertical Developer’s right to inspect and purchase the Property pursuant to this Agreement and for Port’s execution, delivery and performance of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is nonrefundable, and is fully earned and will be retained by Port notwithstanding any other provision of this Agreement.

(e) **[For Vertical Developer Affiliates]: Credit Bid.** All payments to be made by Vertical Developer under this *Section 2.2* will be made by Credit Bid in accordance with **[Sections 3.3—3.5 of the Financing Plan]** attached to the Horizontal DDA and applied when due (“**Credit Bid**”), and all refunds will be applied by a reversal of the Credit Bid.

3. CONDITIONS OF TITLE.

3.1. Permitted Encumbrances.

(a) **Permitted Exceptions.** At the Close of Escrow Port will convey interest in and to the Property to Vertical Developer **[for fee parcels: by quitclaim deed in the form of Exhibit C attached hereto (the “Deed”)] [for ground lease parcels: by “Parcel Lease”]**, subject to the following: (i) Permitted Port Title Exceptions (as defined below); (ii) all items of which

Vertical Developer had actual notice or knowledge of as of the expiration of Contingency Period (subject to the provisions of *Section 6.3* with respect to a Port Title Defect); (iii) this Agreement and the Memorandum; (iv) the Master Association and TMA; (v) CFD and Assessment Matters; (vi) Development Easements, if any, (vii) the Pier 70 Master Association Documents; and (vii) [for fee parcels: the Deed, the Restrictive Covenant, Notice of Transfer Fee Covenant, and the Transfer Fee Covenant] [for ground lease parcels: the Parcel Lease] (collectively, “Permitted Encumbrances”), [Note: Add others as necessary/appropriate] and otherwise free and clear of (1) rights of possession by others and [for fee parcels: rights of possession of Port], and (2) liens, encumbrances, covenants, assessments, easements, leases, licenses or other use agreements, and taxes.

(b) **Permitted Port Title Exceptions.** For purposes of this Agreement, the following will constitute “Permitted Port Title Exceptions”:

- (i) Each matter affecting title to Property disclosed by the Title Commitment and Survey, and not otherwise objected to by Vertical Developer prior to the expiration of the Contingency Period under *Section 6.4* hereof;
 - (ii) the lien of ad valorem real estate taxes, special taxes and assessments not yet delinquent as of the date of Closing, subject to proration as herein provided;
 - (iii) Laws, including but not limited to building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;
 - (iv) the customary printed exceptions and exclusions contained in title insurance policies;
 - (v) matters caused by or on behalf of Vertical Developer or its Agents;
 - (vi) Development Easements;
 - (vii) Matters approved by Vertical Developer prior to Close of Escrow;
 - (viii) The TMA;
 - (ix) The Pier 70 Master Association Documents—including any
- CC&Rs;
- (x) The Restrictive Covenants;
 - (xi) The Notice of Transfer Fee Covenant;
 - (xii) The Transfer Fee Covenant; and
 - (xiii) The CFD and Assessment Matters.

(c) **Horizontal Documents.** The Property forms a part of the 28-Acre Site and until the Closing, is subject to the Horizontal DDA, the Master Lease, and other documents contemplated in such agreements (collectively, the “Horizontal Documents”). The Horizontal Documents require the Horizontal Developer to construct and complete the Horizontal Improvements and other improvements (other than the Deferred Infrastructure in some cases) on the 28-Acre Site, including the Property, within a certain period that includes the period after the Effective Date. The Horizontal Improvements and other improvements may be necessary for the successful construction and operation of the Vertical Project. Accordingly, Vertical Developer agrees and acknowledges that (i) Horizontal Developer or its assigns may be performing material physical changes to the Property during the period prior to Closing in connection with the construction of the Horizontal Improvements (other than the Deferred Infrastructure in some cases), (ii) Port and Horizontal Developer may amend or modify the Horizontal Documents without Vertical Developer’s prior consent, (iii) subject to *Section 3.4*, prior to Closing, Port may record or cause to be recorded, Development Easements on the Property to advance the development of the Horizontal Improvements, and (iv) subject to *Section 3.1(d)*, prior to

Closing, Port may make adjustments to the legal description of the Property to exclude any portion thereof that is or is intended to become a right-of-way as the development of the 28-Acre Site advances, Vertical Developer further agrees and acknowledges that because Port is not performing any of the Horizontal Improvements including any that may affect Vertical Developer's ability to commence and complete construction of the Vertical Project, Vertical Developer will work with the Horizontal Developer to agree on any schedule of performance for the completion of any portion of the Horizontal Improvements and other improvements that may impact Vertical Developer's ability to commence and complete construction of the Vertical Project and Vertical Developer's releases and waivers against or for the benefit of the City Parties, as described in *Section 4.4* include any Claims related to the Horizontal Improvements.

(d) Modifications to Legal Description of Property. Vertical Developer acknowledges and agrees that minor modifications to the boundaries of the Property may be required to accommodate existing and proposed rights-of-way as development of the 28-Acre Site advances. Accordingly, prior to the Close of Escrow, Port may request that Vertical Developer will consent to any such minor modification, such consent not to be unreasonably withheld, conditioned or delayed so long as the modification (i) will not materially and adversely affect Vertical Developer's intended development, use or operation of the Property and the Vertical Project as reasonable determined by Vertical Developer and such intended development, use or operation is consistent with the SUD and Design for Development; and (ii) is not inconsistent with the SUD, Design for Development or Phase Submittal (if submitted) in any material respect. *Section 12.12* (Post Closing Boundary Adjustments) addresses boundary adjustments after Close of Escrow.

3.2. Restrictive Covenants. Vertical Developer acknowledges and agrees that Port would not Deliver the Property unless Vertical Developer agreed, among other things, to comply with (a) the obligation to construct the Vertical Project in accordance with the terms of this Agreement, (b) the obligation to construct the Deferred Infrastructure in accordance with the terms of this Agreement and the VCA, (c) the CFD and Assessment Matters further described in *Section 3.3*, [for fee parcels: (d) those certain restrictive covenants attached hereto as *Exhibit XX* pertaining to Vertical Developer's use and operation of the Property (the "Restrictive Covenant"), (e) those certain transfer fee covenants attached hereto as *Exhibit XX* (the "Transfer Fee Covenant") [and] [for residential condo parcels: (f) the obligation to develop the Vertical Project that complies with the Scope of Development attached hereto as *Exhibit XX* (the "Scope of Development").]

3.3. Acknowledgements and Covenants Regarding Community Facilities Districts and Assessment Matters.

(a) Section 53341.5 Acknowledgment. Prior to Close of Escrow, Vertical Developer will deliver to Port an acknowledgment (the "Notice of Special Tax") in the form attached hereto as *Exhibit XX* confirming that Vertical Developer has been advised of the terms and conditions of the CFD, including that the Property is subject to the CFD Assessments.

(b) Facilities and Maintenance CFD. Vertical Developer will comply with all of the covenants and acknowledgements set forth in *Exhibit XX* attached hereto (CFD and Assessment Matters), which covenants and acknowledgements will be recorded against title to the Property and survive Close of Escrow ("Agreement to Comply with CFD and Assessment Matters").

3.4. Reservation of Easements.

(a) Development Easements - Before Close of Escrow. Before the Close of Escrow, without limiting *Section 3.1(d)*, in order to facilitate the development of the Horizontal Improvements, Port has the right, subject to the limitations set forth below, to grant, convey or dedicate easements, and similar rights on and over the Property to utility companies, local water and sewer districts, the City, and other entities that provide utility or similar service to the

Property or properties located adjacent thereto (the types of easements and similar rights described in the foregoing are, collectively, referred to herein as “**Development Easements**”); provided, however, before Port records, grants, conveys or dedicates any Development Easements hereunder, (i) if prior to the expiration of the Contingency Period, Port will furnish Vertical Developer with a copy of the proposed Development Easements for Vertical Developer’s review. and (ii) if after the expiration of the Contingency Period, Port will furnish Vertical Developer with a copy of the proposed Development Easements for Vertical Developer’s review and approval which approval will not be unreasonably withheld, conditioned or delayed so long as the proposed Development Easements (A) will not materially and adversely affect Vertical Developer’s intended development, use or operation of the Property or the Vertical Project as reasonably determined by Vertical Developer and such intended development, use or operation is consistent with the SUD and Design for Development, (B) are not inconsistent with the SUD, Design for Development or Phase Submittal (if submitted) in any material respect, and (C) are in form and substance reasonably acceptable to Vertical Developer. Vertical Developer will approve or disapprove any proposed Development Easement that requires Vertical Developer’s prior approval within twenty (20) days following its receipt thereof; if Vertical Developer fails to approve or disapprove the applicable Development Easement within such twenty (20) day period, Port may submit to Vertical Developer a second written request for approval. If Vertical Developer fails to approve or disapprove the applicable proposed Development Easement within ten (10) days after Port’s second written request for approval, Vertical Developer will be deemed to have approved the proposed applicable Development Easements.

(b) Master Association and Transportation Management Association.

Without limiting the generality of the foregoing provisions of this *Section 3.4*, Vertical Developer acknowledges that the Property is included within Pier 70 Master Association (the “**Master Association**”) and Vertical Developer is obligated to participate in a Transportation Management Association (the “**TMA**”) that was formed to implement and administer the Transportation Demand Management Plan for the 28-Acre Site. Vertical Developer further acknowledges that the Property is or, prior to or concurrently with the Close of Escrow, **[if applicable]**: or subsequent to the Close of Escrow,] will be subject to the covenants, conditions and restrictions contained in the **[for commercial parcels: Master Commercial Declaration] [for residential parcels: Master Residential Declaration]** by the recording of a supplemental declaration, and Vertical Developer is or will be obligated to participation in the Master Association and TMA, and that Vertical Developer will be responsible for all assessments that may be owing with respect to the Property following the Close of Escrow with respect to the Master Association and TMA.

3.5. *Vertical Developer’s Responsibility for Title Insurance.* Vertical Developer understands and agrees that the right, title and interest in the Property will not exceed that vested in Port, and Port is under no obligation to furnish any policy of title insurance in connection with this transaction. Vertical Developer recognizes that any fences or other physical monument of the Property’s boundary lines may not correspond to the legal description of the Property. Port will not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate survey or inspection might reveal. It is Vertical Developer’s sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

[For ground lease parcels: Vertical Developer will cause to be delivered to Port at Closing, a title insurance policy insuring Port’s fee interest in the Property subject to the Parcel Lease and the other Permitted Encumbrances which are applicable to the fee. Port’s title insurance policy will be at Vertical Developer’s sole cost.

4. INDEPENDENT INVESTIGATION; “AS IS” CONDITION; RELEASE OF PORT; PORT COVENANTS.

4.1. Vertical Developer’s Independent Investigation. Vertical Developer represents and warrants to Port that as of the expiration of the Contingency Period described in *Section 6.1*, Vertical Developer will have performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through agents of Vertical Developer’s choosing, including, without limitation, the following matters (collectively, the “Property Conditions”):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of Port’s interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the Property’s compliance with or applicability of all Laws and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements, environmental permits and building and fire codes.

(c) The quality, nature, adequacy and physical condition in, on, around, under, and pertaining the Property, including all other physical and functional aspects in, on, around, under, and pertaining to the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition in, on, around, under, and pertaining to the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement,

(e) The suitability in, on, around, under, and pertaining to the Property for Vertical Developer’s intended uses or the development of the Vertical Project. Vertical Developer represents and warrants that its intended use of the Property is [_____].

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting in, on, around, under, and pertaining to the Property, including its development and use contemplated under this Agreement.

4.2. Property Disclosures. California law requires owners to disclose to buyers or lessees the presence or potential presence of certain Hazardous Materials. Accordingly, Vertical Developer is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, any chemical identified as a “constituent of concern” in the or Pier 70 Risk Management Plan, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. [IF APPLICABLE: Further, there are Hazardous Materials located on the Property, which are described in _____, copies of which have been delivered to or made available to Vertical Developer.] By execution of this Agreement, Vertical Developer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

[IF APPLICABLE: Vertical Developer acknowledges that Port has disclosed the matters relating to the Property referred to in *Schedule 4.2* attached hereto. Nothing contained in such schedule will limit any of the provisions of this Article or relieve Vertical Developer of its obligations to conduct a diligent inquiry hereunder, nor will any such matters limit any of the provisions of *Section 4.3* or *Section 4.4*.

4.3. “As Is With All Faults”; Disclaimer of Representations and Warranties .
VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT **[For**

Fee Parcels: PORT IS SELLING AND VERTICAL DEVELOPER IS PURCHASING PORT'S INTEREST IN] [**For Ground Leases:** IT IS LEASING PURSUANT TO THE TERMS OF THE PARCEL LEASE] THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. VERTICAL DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION. VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, INCLUDING ITS PORT, NOR ANY OF THE OTHER CITY PARTIES, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO ANY MATTERS CONCERNING THE PROPERTY, THE SUITABILITY OR FITNESS OF THE PROPERTY OR THE APPURTENANCES TO THE PROPERTY FOR THE VERTICAL PROJECT OR THE VERTICAL DEVELOPER'S INTENDED USES OR OPERATION OF THE PROPERTY, TITLE MATTERS, OR ANY OF THE PROPERTY CONDITIONS, THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, THE PROPERTY'S COMPLIANCE WITH LAWS, INCLUDING ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS RELATING TO THE PROPERTY, THE VERTICAL PROJECT, OR ANY MATTER AFFECTING THE USE, VALUE, OR OCCUPANCY IN THE PROJECT, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PROPERTY OR THE PROPOSED VERTICAL PROJECT.

4.4. Release of City and Port. As part of its agreement to [for fee parcels: purchase] [for lease parcels: accept] the Property in its "As Is With All Faults" condition, Vertical Developer, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges, the California State Lands Commission, City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, and all of their respective officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns (collectively, the "City Parties"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen (collectively, "Claims"), whether direct or indirect, known or unknown, foreseen or unforeseen, that Vertical Developer may now have or that may arise on account of or in any way be connected with (i) the suitability of the Property for the development of the Vertical Project or Vertical Developer's and its Agents and customer's past, present and future use of the Property, (ii) title matters, or any of the property conditions, the legal, physical, geological or environmental condition of the Property (including soil and groundwater conditions), including, without limitation, any Hazardous Material in, on, under, above or about the Property, (iii) any Laws applicable thereto, including, without limitation, Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (v) construction impacts from the Horizontal Improvements, delay in completion of or failure to complete the Horizontal Improvements, defects in the Horizontal Improvements, and any other matter related to Horizontal Improvements, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Property or the Vertical Project, including all Claims arising from the joint, concurrent, active or passive negligence of any of City Parties, but excluding any intentionally harmful acts committed solely by Port or City.

Vertical Developer expressly acknowledges and agrees that the amount payable or expended by Vertical Developer hereunder does not take into account any potential liability of the City Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Agreement in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the City Parties, and Vertical Developer expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Vertical Developer or other waivers contained in this Agreement

and as a material part of the consideration of this Agreement, Vertical Developer fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the City Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, the City Parties arising out of this Agreement or the uses authorized hereunder, including, any interference with uses conducted by Vertical Developer pursuant to this Agreement regardless of the cause, and whether or not due to the negligence of the City Parties.

Further, the City Parties will not, under any circumstance, be responsible or liable to Vertical Developer for, and Vertical Developer hereby releases the City Parties from, any Claims that may arise on account of or in any way be connected with the failure to complete any Horizontal Improvements (as defined in the Horizontal DDA) on or near the Property, or at any location within the 28-Acre Site, and Vertical Developer, its successors and assigns, assume the risk that any such Horizontal Improvements will not be completed.

Vertical Developer understands and expressly accepts and assumes the risk that any facts concerning the Claims released, waived, and discharged in this Agreement includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the Claims released, waived, and discharged in this Agreement, Vertical Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

INITIALS: VERTICAL DEVELOPER: _____

4.5. *Survival.* The provisions of this *Article 4* will survive the expiration or earlier termination of this Agreement.

5. PRE-CLOSING COVENANTS.

5.1. *Access to Property Prior to Closing.* In connection with any entry for the purposes of performing non-invasive investigations and tests necessary to carry out the terms of this Agreement or performing visual surveys and inspections by Vertical Developer or its Agents onto the Property prior to the Close of Escrow, Vertical Developer will enter into a license with Port on Port's standard form of license attached hereto as ***Exhibit XX*** (the "**License**"). If Vertical Developer desires to perform invasive testing or other due diligence on the Property, then at Port's election, the License may be adjusted by Port, in its sole discretion to account for the additional risks associated with such activities, including increased insurance coverage amounts or additional insurance coverage and broader indemnity and release provisions. If the Property is then under lease to Horizontal Developer under the Master Lease, Vertical Developer will enter into a license with Horizontal Developer in the form substantially on the same terms and conditions as the License, as reasonably acceptable to Horizontal Developer. If the Property is not under lease to Horizontal Developer under the Master Lease, Vertical Developer agrees and acknowledges that Port will include in the License, any additional provisions required by Law

(or mandated by the Port Commission pursuant to a policy adopted by the Port Commission in a public meeting) to be included in real property licenses.

5.2. Final Map. From and after the expiration of the Contingency Period and prior to the Close of Escrow, Vertical Developer, at its sole cost and expense, will have the right but not the obligation to commence to process a Final Map; provided, however, Vertical Developer will not cause or permit the recordation of such Final Map prior to the Close of Escrow. Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to process such Final Map in accordance with the terms of *Section 12.9(b)*.

5.3. Regulatory Approvals for Vertical Project. From and after the expiration of the Contingency Period and prior to the Close of Escrow, Vertical Development will have the right, but not the obligation, at its sole cost and expense, to pursue Regulatory Approvals for the Vertical Project including, without limitation, schematic design approval under the SUD; provided, however, Vertical Developer will not cause or permit the issuance of any such Regulatory Approval prior to the Close of Escrow if the same would be binding upon Port. Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to process such Regulatory Approvals in accordance with the terms of *Section 12.9(b)*.

6. CONDITIONS PRECEDENT TO CLOSING OF ACQUISITION.

6.1. Contingency Period.

(a) **Generally.** Vertical Developer will have until 5:00 p.m. San Francisco Time on [insert date that is forty-five (45) days after the Effective Date of Agreement] to inspect and review the Property and to elect to proceed with the Delivery of the Property on and subject to the terms of this Agreement (such period being referred to herein as the "Contingency Period"). If Vertical Developer elects to proceed with the purchase of the Property, then Vertical Developer will, before the expiration of the Contingency Period, notify Port and Escrow Agent in writing that Vertical Developer has approved all such matters ("Acceptance Notice"). If Vertical Developer elects not to proceed with the purchase of the Property, then Vertical Developer must, before the expiration of the Contingency Period, deliver notice to Port that it is exercising its right to terminate this Agreement in accordance with *Section 6.2* (the "Termination Notice"). If before the end of the Contingency Period Vertical Developer fails to give Port a Termination Notice or an Acceptance Notice, then Vertical Developer will be deemed to have elected to proceed to Closing.

(b) **Objectionable Matters.** If Vertical Developer objects to any of aspect of the Property within the Contingency Period, then Vertical Developer may (but will not be obligated to) deliver to Port written notice explaining the aspects of the Property that are objectionable to Vertical Developer ("Objection Notice"). Port has no obligation to remove or remedy any of the items listed in the Objection Notice objectionable to Vertical Developer ("Objectionable Items"). Port has ten (10) days after receipt of the Objection Notice to notify Vertical Developer whether Port will remove or remedy the Objectionable Items; provided, however, if less than ten (10) days remain before the Contingency Period expires when Port receives the Objection Notice, then Port may, at its sole discretion, extend the Contingency Period by the number of days necessary for Port to have ten (10) days to respond to the Objection Notice. If Port so extends the Contingency Period, then Vertical Developer may terminate this Agreement at any time prior to the date that is one (1) business day after the expiration of such ten (10) day period if and only if Port does not agree in writing, prior to the expiration of such ten (10) day period, to remove or remedy all of the Objectionable Items to Vertical Developer's satisfaction prior to Closing.

(c) **Port Election to Remove or Remedy Objectionable Matter.** If Port elects to remedy or remove the Objectionable Items and requires additional time beyond the Closing Date to remove or remedy any of the items, the Closing Date will be delayed for so long as Port diligently pursues such removal or remedy, not to exceed thirty (30) days unless

otherwise agreed by the Parties. If and when Port elects not to remove or remedy the Objectionable Item and so notifies Vertical Developer in writing, which Port may do at any time including following an initial election to pursue remedial or corrective actions, then Vertical Developer may elect to either (i) proceed to Closing in accordance with the terms of this Agreement, in which event, Vertical Developer will be deemed to have waived any objections to the Objectionable Items Port will not remove or remedy, or (ii) terminate this Agreement in accordance with **Section 6.2**, in each case by delivering written notice thereof to Port not later than three (3) business days after the date Port notifies Vertical Developer in writing that Port has elected not to remove or remedy the Objectionable Item. If Vertical Developer fails to notify Port of its election within such three (3) business day period, Vertical Developer shall be deemed to have elected to proceed to Closing.

6.2. Vertical Developer's Right to Terminate; Return of Deposit. If Vertical Developer elects to terminate this Agreement in accordance with **Section 6.1(a)**, **Section 6.1(c)**, **Section 6.3** or **Section 8.1**, or **Section 10.2**, or **Section 10.4(a)**, (collectively, "VD Terminable Sections") then [for non-Credit Bid deals: the Deposit will be returned promptly to Vertical Developer upon notice thereof to Escrow Agent] [for Credit Bid deals: the Credit Bid will be reversed], Vertical Developer will have no further remedies against Port and, except for any provisions of this Agreement which expressly state that they will survive the termination of this Agreement, this Agreement will be terminated and canceled in all respects and neither Vertical Developer nor Port will have any further rights or obligations hereunder. If Vertical Developer does not duly terminate this Agreement in accordance with and within the time periods set forth in the applicable VD Terminable Sections, or if Vertical Developer waives its right to terminate this Agreement, (i) this Agreement will remain in full force and effect and Vertical Developer will have no further right to terminate this Agreement under the applicable VD Terminable Sections, and (ii) Vertical Developer will be deemed to have waived any liability of Port and any right to refuse to consummate the Closing by reason of any condition known to Vertical Developer as of the last day of the Contingency Period, or if applicable, one (1) business day following Port's delivery of written notice to Vertical Developer that Port will not remove or remedy the Objectionable Item.

6.3. Title Review Following Contingency Period Expiration.

(a) If at the time scheduled for Close of Escrow any (i) possession by others, (ii) rights of possession other than those of Vertical Developer, or (iii) lien, encumbrance, covenant, assessment, easement, lease, tax or other matter which is not a Permitted Port Title Exception, encumbers the Property and would materially and adversely affect the development of the Property ("Port Title Defect"), Port will have up to thirty (30) days from the date scheduled for Close of Escrow to remove the Port Title Defect. The Close of Escrow will be extended to the earlier of seven (7) Business Days after the Port Title Defect is removed or the expiration of the thirty (30) day period. If the Port Title Defect can be removed by bonding and Port has not so bonded within the thirty (30) day period, Vertical Developer may, but will not be obligated to, cause a bond to be issued. If Vertical Developer causes a bond to be issued in accordance with this **Section 6.3(a)**, Port will reimburse Vertical Developer for the cost of such bond within thirty (30) days of demand or, at Port's option, credit such amount against the Acquisition Price payable to Port under this Agreement.

(b) If at the Closing Date, a Port Title Defect still exists, Vertical Developer may by written notice to Port either (i) terminate this Agreement and [for non-Credit Bid deals: receive a return of the Deposit] [for Credit Bid deals: the Credit Bid will be reversed] or (ii) accept Delivery of the Property. If Vertical Developer accepts Delivery of the Property subject to a Port Title Defect, the Port Title Defect will be deemed waived. If Vertical Developer does not accept Delivery of the Property and fails to terminate this Agreement within seven (7) days after the Closing Date, or any extension as provided above, Port may terminate this Agreement upon three (3) days written notice to Vertical Developer. If the Agreement is terminated under this Section the terms of **Section 6.2** shall apply.

6.4. *Port's Conditions Precedent.*

(a) **Port's Conditions Precedent.** The following are conditions precedent to Port's obligation to consummate the Close of Escrow and thereby Deliver the Property to Vertical Developer:

(i) Vertical Developer will have performed all obligations under this Agreement required to be performed on its part before the Close of Escrow, no uncured Acquisition Event of Default will exist on Vertical Developer's part under this Agreement and all of Vertical Developer's representations and warranties made in *Section 21.3* will have been true and correct when made and will be true and correct as of the Close of Escrow. At the Close of Escrow, Vertical Developer will deliver to Port a certificate to confirm the accuracy of such representations and warranties, substantially in the form attached hereto as *Exhibit XX*.

(ii) Vertical Developer will have deposited into Escrow, [for non-Credit Bid deals: the balance of the Acquisition Price], [for ground leases: the security deposit and all other sums, including any bonds, required to be paid to Port on or prior to the effective date of the Parcel Lease pursuant to the terms thereof] and all other sums necessary to consummate the Close of Escrow pursuant to the terms of this Agreement.

(iii) [for Credit Bid deals: Vertical Developer will have notified Port that it consents to the balance of the Acquisition Price being Credit Bid at Closing;

(iv) Vertical Developer will have deposited into Escrow each of the documents described in *Section 7.4(b)*, each duly executed and acknowledged by Vertical Developer.

(v) [for ground lease parcels: Vertical Developer will have obtained all insurance required under the Parcel Lease and will have deposited evidence thereof into Escrow.

(vi) Vertical Developer will have satisfied the submittal requirements that Vertical Developer (or Vertical Developer's contractor) is required to make before Close of Escrow relating to Vertical Developer's obligations to comply with the Workforce Development Plan attached hereto as *Exhibit XX* ("**Workforce Development Plan**").

(vii) Vertical Developer and Port will have executed mutual irrevocable instructions to the Escrow Agent, all in accordance with *Article 7*.

(viii) Vertical Developer will have executed and delivered to Port a certification of compliance with San Francisco Administrative Code Chapters 12B and 12C on the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101), together with supporting documentation, and will have secured approval of the form by the City's Human Rights Commission.

(ix) Vertical Developer has deposited into Escrow such evidence of authority to enter into [the Parcel Lease], this Agreement and any other Transaction Documents, as Port and the Title Company may reasonably require (including certificates of good standing, board resolutions and certificates of incumbency).

(x) Vertical Developer will have delivered into escrow, a reaffirmation that all the representations and warranties made in *Section 21.3* are and remain true and correct as of the Closing Date.

(xi) [add as applicable: Vertical Developer will have complied with the requirements of the Housing Plan as it pertains to the Property to the extent required at Close of Escrow.]

(xii) Horizontal Developer will have deposited into Escrow duly executed and acknowledged counterparts of the DDA Release and Partial Termination.

(xiii) [For ground lease parcels only: The Title Company is irrevocably committed to issue to Port upon payment by Vertical Developer, the title insurance policy required by *Section 3.5* to be delivered to Port as of the Closing Date.]

(b) Satisfaction of Port's Conditions. The conditions precedent set forth in *Section 6.4(a)* are intended solely for the benefit of Port. If any such condition precedent is not satisfied on or before the Closing Date, Port's Executive Director, or, if the Executive Director determines that waiver of the condition precedent materially affects the rights, obligations, or expectations of Port, the Port Commission by resolution, will have the right in its sole discretion either to waive in writing the condition precedent in question and proceed with the Close of Escrow, or, in the alternative, to terminate this Agreement. If Vertical Developer is using reasonably diligent efforts to meet or satisfy the conditions precedent to Close of Escrow, the date for the Close of Escrow will be extended for a reasonable period or periods of time specified by Vertical Developer, but such periods in the aggregate will not extend beyond the Closing Date (unless otherwise extended by mutual agreement of the Parties) to allow such conditions precedent to be satisfied, subject to Port's further right to terminate this Agreement by the Closing Date if all such conditions precedent have not been satisfied.

6.5. *Vertical Developer's Conditions to Closing.*

(a) Vertical Developer Conditions Precedent. The following are conditions precedent to Vertical Developer's obligation to consummate the Close of Escrow and accept the Property from Port under this Agreement:

(i) Port will have performed all obligations under this Agreement which Port is required to perform before the Close of Escrow and there is no Acquisition Event of Default by Port.

(ii) The Title Company is irrevocably committed to issue to Vertical Developer, upon payment by Vertical Developer, a title insurance policy satisfactory to Vertical Developer, insuring Vertical Developer's interest in the Property subject to Permitted Encumbrances.

(iii) Port will have deposited into escrow each of the documents described in *Section 7.4(a)*, each duly executed and acknowledged by Port.

(iv) Horizontal Developer will have deposited into escrow duly two (2) duly executed and acknowledged counterparts of each of the Development Agreement Assignment, DDA Release and Partial Termination.

(v) Horizontal Developer will have deposited into escrow a ground lessee's affidavit and, if required by Title Company, a mechanic's lien indemnity, in form and substance reasonably satisfactory to Horizontal Developer and Title Company.

(b) Satisfaction of Vertical Developer's Conditions Precedent. The conditions precedent set forth in *Section 6.5(a)* are intended solely for the benefit of Vertical Developer. If any such condition precedent is not satisfied on or before the Close of Escrow, Vertical Developer will have the right in its sole discretion to waive in writing the condition precedent in question and proceed with the Close of Escrow and acceptance of the Property under this Agreement. If Port is using reasonably diligent efforts to meet the conditions precedent, the date for the Close of Escrow may be extended, at Vertical Developer's sole option, for a reasonable period or periods of time specified by Vertical Developer, but such periods in the aggregate will not extend beyond the Closing Date, to allow such conditions precedent to be satisfied, subject to Vertical Developer's further right to terminate this Agreement by the Closing Date.

6.6. *Taxes and Assessments.*

(a) **Ad Valorem Taxes and Assessments Before and After Close of Escrow.** For any period before the Close of Escrow, Vertical Developer is responsible for the payment of any ad valorem taxes (including possessory interest and special taxes) assessed by reason of this Agreement. Ad valorem taxes and assessments levied, assessed, or imposed for any period from and after the Close of Escrow, including possessory interest and special taxes, are the sole responsibility of Vertical Developer.

(b) **Possessory Interest Taxes.** Vertical Developer recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Vertical Developer may be subject to the payment of property taxes levied on such interest. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City report certain information relating to this Agreement, and any renewals of this Agreement, to the County Assessor within sixty (60) days after any such transaction, and that Vertical Developer report certain information relating to any assignment under this Agreement to the County Assessor within sixty (60) days after such assignment transaction. Vertical Developer agrees to provide such information as may be requested by Port to enable Port to comply with this requirement.

(c) **Right to Contest.** Subject to *Section 3.3* and the matters described therein, Vertical Developer has the right to contest the amount, validity or applicability, in whole or in part, of any ad valorem, possessory interest or other taxes and assessments levied on Vertical Developer or the Property by reason of this Agreement (collectively, “**Taxes and Assessments**”) by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, prior to commencement of such contest, Vertical Developer notifies Port of such contest. Vertical Developer must notify Port of the final determination of such contest within fifteen (15) days after such determination. Subject to *Section 3.3*, nothing in this Agreement requires Vertical Developer to pay any Taxes and Assessments so long as Vertical Developer contests the validity, applicability or amount of such Taxes and Assessments in good faith, and so long as it does not allow the portion of the Property affected by such Taxes and Assessments to be forfeited to the entity levying such Taxes and Assessments as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Vertical Developer must comply with such condition as a condition to its right to contest. Vertical Developer is responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Vertical Developer must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port’s interest in the Property may be subjected to such lien or claim. Vertical Developer is not required to pay any Taxes and Assessments being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Property. Port will not be subjected to any liability for the payment of any fines or penalties, and except as provided in the preceding sentence, costs, expenses or fees, including Attorneys’ Fees and Costs, in connection with any such proceeding. **[for fee parcels only]**: Notwithstanding the foregoing, from and after the Close of Escrow, subject to *Section 3.3* and the matters described therein, Vertical Developer’s right to contest Taxes and Assessments will be absolute and, without limiting the generality of the foregoing, in no event will Vertical Developer be obligated to notify or provide security to Port nor will Port have a right to participate.]

(d) **Survival.** This *Section 6.6* will survive the expiration or earlier termination of this Agreement.

7. ESCROW AND CLOSING.

7.1. Escrow. Vertical Developer and Port will deposit an executed counterpart of this Agreement with the Title Company. Port and Vertical Developer will deposit escrow instructions as appropriate to enable the Escrow Agent to comply with the terms of this Agreement. In addition, Port will deposit supplementary escrow instruction instructing Escrow Agent to apply all funds received by it in accordance with the requirements of the Financing Plan. In the event of any conflict between the provisions of this Agreement and any escrow instructions or supplementary escrow instructions, the terms of this Agreement or the Financing Plan, as applicable, will control.

7.2. Closing. The Closing hereunder will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of the Title Company on the date that is [for residential parcels: thirty (30) days] [for commercial parcels: six months after the expiration of the Contingency Period before 3:00 p.m. San Francisco time or such earlier date and time as Vertical Developer and Port may mutually agree upon in writing (the “Target Closing Date”). **[for residential parcels only:** Such date and time may not be extended without the prior written approval of both Port and Vertical Developer, which may be withheld in each of their sole discretion.] The “Closing Date” is the date that the Closing or Close of Escrow occurs.

7.3. **[for commercial parcels only:** *Extension of Closing Date.*

(a) **Extension of Target Closing Date.** Vertical Developer has one option to extend the Target Closing Date by an additional six (6) months (the “Extended Closing Date”) in accordance with this *Section 7.3(a)* by delivering written notice to Port of its election to extend the Target Closing Date to the Extended Closing Date (“Extension Notice”). The Target Closing Date will be extended to the Extended Closing Date (unless an earlier Closing Date is agreed to between the Parties) only if all of the following conditions are satisfied (collectively, the “Extended Closing Date Conditions”):

(i) There is no Vertical Developer Acquisition Event of Default, Vertical Developer Default, or Unmatured Vertical Developer Event of Default as of the date Port receives the Extension Notice and during the period after the Target Closing Date;

(ii) Port receives at least ten (10) days before the Target Closing Date, the Extension Notice; and

(iii) **[for non-Credit Bid deals:** Port receives by wire transfer on or before the Target Closing Date, an additional deposit equaling ten percent (10%) of the Acquisition Price (the “Additional Deposit”).] **[for Credit Bid deals affiliates:** An additional deposit equaling ten percent (10%) of the Acquisition Price (the “Additional Deposit”) will be Credit Bid on the date Port receives the Extension Notice].

If Vertical Developer does not satisfy the Extended Closing Date Conditions within the time periods set forth in this *Section 7.3(a)* and Closing does not occur by the Target Closing Date, then it will be deemed an Acquisition Event of Default by Vertical Developer and Port will retain the Deposit as liquidated damages.

7.4. *Deposit of Documents.*

(a) **By Port.** At or before the Closing, Port will deposit into escrow the following items:

(i) **[For fee parcels:** the duly executed and acknowledged Deed conveying the Property to Vertical Developer subject to the Permitted Encumbrances;]

(ii) **[For ground lease]** parcels: four (4) duly executed and acknowledged counterparts of the Parcel Lease and two (2) duly executed and acknowledged counterparts of the Memorandum of Lease (in the form attached to the Parcel Lease) (the “**Memorandum of Lease**”);]

(iii) [two (2) duly executed and acknowledged counterpart originals of the Release of Disposition and Development Agreement in the form attached hereto as **Exhibit XX** (the “**DDA Release**”) signed by Port;]

(iv) [two (2) duly executed and acknowledged counterpart originals of the Partial Release of Master Lease in the form attached thereto as **Exhibit [XX]** (the “**Partial Termination**”) signed by Port;]

(v) two (2) duly executed and acknowledged counterparts signed by Port of a memorandum of this Agreement in the form of **Exhibit XX** attached hereto attached hereto (the “**Memorandum of VDDA**”);

(vi) a duly executed owner’s title affidavit in form reasonably satisfactory to Port and Title Company; and

(vii) evidence of authority to consummate the transactions contemplated by this Agreement, as the Title Company may reasonably require (including, if applicable, Port Commission and Board of Supervisors’ resolutions).

(b) **By Vertical Developer**. At or before the Closing, Vertical Developer will deposit into escrow the following items:

(i) **[For ground lease parcels]**: four (4) duly executed by Vertical Developer and acknowledged counterparts of the Parcel Lease and two (2) duly executed by Vertical Developer and acknowledged counterparts of the Memorandum of Lease;]

(ii) two (2) duly executed and acknowledged counterparts of the Memorandum of VDDA;

(iii) the funds necessary to consummate the Close of Escrow **for Credit Bid deals**: (other than the Acquisition Price which is to be Credit Bid in accordance with the terms of this Agreement)];

(iv) **[For fee parcels]**: two (2) duly executed counterparts by Vertical Developer of the Restrictive Covenant;]

(v) **[For fee parcels]**: two (2) duly executed counterparts by Vertical Developer of the Notice of Transfer Fee Covenant and the Transfer Fee Covenant;]

(vi) two (2) duly executed originals by Vertical Developer of the Agreement to Comply with CFD and Assessment Matters; and

(vii) two (2) duly executed originals by Vertical Developer of the Notice of Special Tax; and

(viii) evidence of authority to consummate the transactions contemplated by this Agreement, as Port and the Title Company may reasonably require (including certificates of good standing, board resolutions and certificates of incumbency).

(c) **Further Assurances**. Port and Vertical Developer will each deposit such other instruments as are reasonably required by the Escrow Agent or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

7.5. Steps to Close Escrow. Port and Vertical Developer will instruct the Escrow Agent to consummate the escrow as provided herein. Upon the Close of Escrow, the Escrow

Agent will record in the Official Records, in the following and no other order, the DDA Release, the Partial Termination, [**for fee parcels:** the Deed, the Notice of Transfer Fee Covenant, the Transfer Fee Covenant, the Restrictive Covenants] [**for ground lease parcels:** the Memorandum of VDDA, the Memorandum of Lease], the Agreement to Comply with CFD and Assessment Matters, and any other documents reasonably required to be recorded under the terms of Regulatory Approvals. Upon Close of Escrow, Escrow Agent will deliver a settlement statement to Port and Vertical Developer [**for non-Credit Bid deals:** and deliver to Port all funds received by Escrow Agent on account of the Acquisition Price. Port will instruct the Escrow Agent to disburse the net proceeds of the Acquisition Price to the Project Payment Obligation as defined in the Financing Plan in accordance with **Article 2** (Flow of Funds) of the Financing Plan]. [**for Credit Bid deals:** If the Acquisition Price will be paid by Credit Bid, Port and Vertical Developer will make entries in [**the Developer Capital Schedule and the Port Capital Schedule**] to reflect the disposition of cash, proceeds deemed to have been deposited by Credit Bid as described in the Financing Plan, and any offset to Fair Market Value by the estimated Deferred Infrastructure costs.] [**confirm process**] In addition, the Title Company will issue title policies to Vertical Developer [**for ground lease parcels:** and Port] as required under **Section 3.5**.

7.6. Waiver of Pre-Delivery Conditions. Unless the Parties otherwise expressly agree at the time of Close of Escrow, all pre-Delivery conditions of the Parties will, upon Escrow, be deemed waived by the Party benefited by such condition.

7.7. Merger. Upon the Close of Escrow, the terms set forth in **Section 1** through **Section 10**, inclusive, of this Agreement will be deemed to have merged with the [**for fee parcels:** Deed] [**for ground lease parcels:** Ground Lease] and will be of no further force or effect, except to the extent such term expressly survives the Close of Escrow pursuant to the terms thereof. For the avoidance of doubt, the terms of **Section 11** through **Section 23**, inclusive, of this Agreement will survive the Close of Escrow.

8. RISK OF LOSS PRIOR TO CLOSING.

8.1. Loss. Prior to the Closing Date, Port will give Vertical Developer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event that all or any portion of the Property is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then Vertical Developer may, at its option to be exercised within ten (10) days of Port's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement or consummate the Delivery of the Property for the full Acquisition Price as required by the terms hereof. If Vertical Developer elects to terminate this Agreement or fails to give Port notice within such ten (10)-day period that Vertical Developer will proceed with the purchase, then this Agreement will terminate at the end of such ten (10)-day period and the terms of **Section 6.2** will apply.

8.2. Insurance Proceeds and Awards. Vertical Developer acknowledges that until immediately prior to Closing, the Property will be leased by Port to Horizontal Developer pursuant to the terms and condition of the Master Lease.

(a) **Insurance Proceeds.** Pursuant to the Horizontal Documents, Horizontal Developer is obligated to insure the Property until immediately prior to the Closing. Accordingly, Horizontal Developer may receive insurance proceeds arising from damage or destruction of the Property. If Vertical Developer desires to have any portion of such insurance proceeds available for Vertical Developer's use if it consummates the Delivery of the Property for the full Acquisition Price after damage or destruction of the Property, then Vertical Developer and Horizontal Developer must include the terms of any transfer of insurance proceeds arising from damage or destruction of the Property received by Horizontal Developer to Vertical Developer in the VCA. Port will not be obligated to purchase any third party

commercial liability insurance or property insurance with regard to the Property and in no event, will Port be obligated to transfer to Vertical Developer any insurance proceeds Port may receive or credit against or reduce the Acquisition Price as a result of damage or destruction of the Property.

(b) **Condemnation Awards.** If Vertical Developer elects to consummate the Delivery of the Property for the full Acquisition Price after condemnation of a portion of the Property, Vertical Developer must negotiate with Horizontal Developer for the transfer to Vertical Developer of condemnation award proceeds Horizontal Developer may receive from the partial condemnation of the Property. Port will not be transferring to Vertical Developer or crediting against the Acquisition Price, any condemnation award proceeds.

9. CLOSING EXPENSES.

9.1. **Expenses.** Vertical Developer will pay all fees, charges, costs and other amounts necessary for the opening and Close of Escrow (collectively, the “Closing Costs”), including (i) real property transfer taxes applicable to the Delivery of the Property, (ii) personal property transfer taxes, (iii) the cost of any title reports, surveys, inspections and premiums for all title insurance policies obtained by Vertical Developer, [for ground lease parcel: Port], and if applicable, any lender, (iv) escrow fees and recording charges, and (v) any other costs and charges of the escrow for the transaction contemplated hereby. Vertical Developer will pay the Closing Costs upon the Close of Escrow. If the Title Company requires, Vertical Developer shall pay into Escrow any such fees, costs, charges or other amounts required for the Close of Escrow under this Agreement.

9.2. **Brokers.** The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction [for non-affiliate deals only: other than [] (“Broker”)] and that there are no other claims or rights for brokerage commissions or finder’s fees in connection with the transactions contemplated by this Agreement. If any person [for non-affiliate deals only: other than Broker] brings a claim for a commission or finder’s fee based on any contact, dealings, or communication with either Party, then such Party will defend the other Party from such claim, and will Indemnify the City Parties or Vertical Developer and its officers, employees, directors, owners, heirs, successors, legal representatives and assigns (“Vertical Developer Parties”), as applicable, from, and hold the City Parties or Vertical Developer Parties, as applicable, against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) that the City Parties or Vertical Developer Parties, as applicable, incur in defending against the claim. The provisions of this Section will survive the Closing, or, if the Delivery of the Property is not consummated for any reason, any termination of this Agreement.

10. ACQUISITION DEFAULTS, REMEDIES AND LIQUIDATED DAMAGES.

10.1. **Acquisition Event of Default.** For purposes hereof, an “Acquisition Event of Default” means:

(a) Vertical Developer fails to pay when due, any amount required to be paid hereunder, and such failure continues for a period of five (5) business days following Vertical Developer’s receipt of notice thereof from Port;

(b) Vertical Developer causes or permits the occurrence of a Transfer not permitted under this Agreement;

(c) All conditions to the Close of Escrow in the applicable Party’s favor have been satisfied or waived, and such Party fails to consummate the Closing by the Closing Date in violation of this Agreement;

(d) Vertical Developer files a petition for relief, or an order for relief is entered against Vertical Developer, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or

reorganization, which proceedings if filed against Vertical Developer are not dismissed or stayed within one hundred eighty (180) days;

(e) A writ of execution is levied on this Agreement which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Vertical Developer, which appointment is not dismissed within one hundred twenty (120) days;

(f) Vertical Developer makes a general assignment for the benefit of its creditors; and

(g) The applicable Party violates any covenant set forth in *Sections 1* through and including *Section 9* of this Agreement, or fails to perform any other obligation to be performed by the party under *Sections 1* through and including *Section 9* of this Agreement at the time such performance is due, and such violation or failure continues without cure for more than fifteen (15) days after written notice from the other party specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such fifteen (15) day period, if such party does not within such fifteen (15) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

10.2. Failure to Close Escrow. Subject to *Section 10.3*, if due to an Acquisition Event of Default, Escrow cannot close on the date agreed to by the Parties, the non-defaulting Party may terminate this Agreement by written notice and demand the return of its money, papers or documents deposited in Escrow (including, in the case of Vertical Developer, the return of the Deposit); provided, however, the defaulting Party will have ten (10) days after delivery of such termination notice to perform any acts required of it to permit Close of Escrow. If neither Party has performed fully to enable Close of Escrow by the time established therefor, then either Party may instruct the Title Company to return all documents and funds deposited with it to the applicable Parties in ten (10) days, unless within such ten (10) day period, both Parties perform fully all their obligations to enable Close of Escrow, in which case, the Title Company will proceed to the Close of Escrow without regard to such delay.

10.3. Default by Vertical Developer; Liquidated Damages. IF THE DELIVERY OF THE PROPERTY IS NOT CONSUMMATED DUE TO AN ACQUISITION EVENT OF DEFAULT BY THE VERTICAL DEVELOPER HEREUNDER, PORT WILL BE ENTITLED, AS ITS SOLE AND EXCLUSIVE REMEDY, TO TERMINATE THIS AGREEMENT AND **[FOR NON CREDIT BID DEALS ONLY: RETAIN THE DEPOSIT] [FOR CREDIT BID DEALS ONLY: MAINTAIN THE CREDIT BID OF THE DEPOSIT (IN OTHER WORDS, NOT REVERSE THE CREDIT BID)]** AS LIQUIDATED DAMAGES.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THE DELIVERY OF THE PROPERTY AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: PORT: _____ VERTICAL DEVELOPER: _____

10.4. Port Default; Vertical Developer's Remedies. Upon the occurrence of an Acquisition Event of Default by Port and provided there is no Acquisition Event of Default by

Vertical Developer, Vertical Developer has the exclusive remedies set forth below following the expiration of applicable cure periods:

(a) **Termination.** Vertical Developer may terminate this Agreement upon ten (10) days' written notice to Port, in which event [**for non-Credit Bid deals:** Vertical Developer will receive a return of the Deposit] [**for Credit Bid Deals:** the Credit Bid will be reversed] and the parties shall have no further rights and obligations hereunder except for the obligations that expressly survive termination of this Agreement; or

(b) **Specific Performance.** Vertical Developer may institute an action for specific performance. Port acknowledges that an Acquisition Event of Default by Port under **Section 10.1(a)** will be conclusively deemed to be a breach of an agreement to transfer real property that cannot be adequately relieved by pecuniary compensation as set forth in California Civil Code § 3387; or

(c) **Damages.** Port will not be liable to Vertical Developer for any monetary damages whether caused by any Acquisition Event of Default by Port and in no event will Port be liable for any actual, consequential, incidental or punitive damages; provided, however, if Port is required under the terms of this Agreement to return the Deposit to Vertical Developer and Port fails to return the Deposit in Port's possession as required under this Agreement, then Vertical Developer may institute a cause of action for monetary damages equal to the amount of Deposit that has not been returned by Port; or

(d) **No Other Remedies.** Other than the remedies set forth in Sections 10.4(a), 10.4(b), and 10.4(c), Vertical Developer is not entitled to any other remedies permitted by law or at equity.

11. COMPLIANCE WITH LAWS .

During the term of this Agreement, Vertical Developer will comply with, at no cost to Port, (i) all applicable Laws (taking into account any variances or other deviations properly approved and applicable to the Vertical Project), (ii) the Pier 70 Risk Management Plan, (iii) the Mitigation Monitoring and Reporting Program, (iv) the Transportation Demand Management Plan, [**Note: Add only for parcel leases:** (v) the Parcel Lease,] and [**Note: add other requirements imposed in connection with Project Approvals, if any**]. The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. Vertical Developer acknowledges that the description of the Vertical Project attached hereto does not limit Vertical Developer's responsibility to obtain Regulatory Approvals for the Vertical Project, nor does the Vertical Project limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Vertical Developer's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Property that may be required by any Laws relating to or affecting the Property.

12. DEVELOPMENT OF VERTICAL PROJECT AND RELATED INFRASTRUCTURE.

12.1. Project Requirements.

[**for commercial parcels and residential rental parcels only:** From and after the Close of Escrow, Vertical Developer will have the right, but not the obligation, to construct the Vertical Project. If Vertical Developer so elects to construct the Vertical Project, the Vertical Project will be designed, reviewed, constructed and completed in accordance with (i) **Article 11** (Compliance with Laws) through and including **Article 23** (Definitions) of this Agreement (including the terms of any exhibits referenced therein), (ii) the Vertical Development Requirements, (iii) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen sinks in any café, restaurant or other food establishment on the Property, (iv) the Mitigation Monitoring and Reporting Program, and (v) the Workforce Development Plan (sometimes collectively referred to as the "**Project Requirements**"). Vertical Developer hereby

consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

Use only for residential parcels conveyed in fee: Vertical Developer must construct the Vertical Project. The Vertical Project will be designed, reviewed, constructed and completed in accordance with (i) the Scope of Development attached hereto as *Exhibit XX*, (ii) Schedule of Performance attached hereto as *Exhibit XX*, (iii) *Articles 11* (Compliance with Laws and Regulatory Approvals) through and including *Article 23* (Definitions) of this Agreement (including the terms of any exhibits referenced therein), (iv) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen sinks in any café, restaurant or other food establishment on the Site, (v) the Mitigation Monitoring and Reporting Program; and (v) the Workforce Development Plan (sometimes collectively referred to as the “**Project Requirements**”). Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

12.2. Mitigation Monitoring and Reporting Program. In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the Vertical Project will be in accordance with all applicable Environmental Laws and the Mitigation Monitoring and Reporting Program attached hereto as *Exhibit XX*. Vertical Developer will incorporate the Mitigation Monitoring and Reporting Program into any contract or subcontract.

12.3. Amendment of Development Requirements. Vertical Developer will not seek any amendment to the Design for Development under Section [XXX] of the SUD or to the SUD under Section 302 of the Planning Code without obtaining the prior written consent of Port (and, for any proposed amendment that may impact Horizontal Developer, the Horizontal Developer), which consent may be given or withheld in each of their sole discretion. In its application to Port or the City for a Regulatory Approval under the SUD or applicable building codes, Vertical Developer will expressly identify in writing any elements of its proposed construction that requires an amendment to the Vertical Development Requirements, and state the reason for the proposed amendment. No amendment to the Vertical Development Requirements will be effective with respect to such items if an amendment was not clearly sought by Vertical Developer in writing and such amendment was not approved by the Port in its proprietary capacity.

12.4. Construction of Infrastructure. Vertical Developer will be solely responsible for developing all improvements within the Property, including, without limitation, private right of ways, pedestrian walkways, infrastructure, and landscaping and hardscaping in any open space and common areas located within the Property. **Only for certain commercial and residential rental parcels—delete for residential parcels conveyed by fee:** If Vertical Developer elects to construct the Vertical Project,] Vertical Developer will also be required to construct the Deferred Infrastructure identified on *Exhibit XX* attached hereto to the extent the obligation to construct the Deferred Infrastructure was wholly transferred to, and accepted by, Vertical Developer in the VCA. Horizontal Developer (or its successors or assigns with respect to the obligation to construct Horizontal Improvements in accordance with the Pier 70 Infrastructure Plan (attached to the Horizontal DDA as *Exhibit [XX]*)) will cause to be constructed Horizontal Improvements serving the Property, including streets and utilities necessary to serve the Property adjacent to (but not within) the Property, in accordance with the terms of the Horizontal DDA and as

between Vertical Developer and Horizontal Developer, in accordance with the VCA. If Vertical Developer requires access to any real property outside of the Property that is under the control of Port in connection with the construction of the Deferred Infrastructure, Vertical Developer and Port will use good faith efforts to negotiate and execute a License as may be adjusted between the Parties to account for the additional risks associated with such activities, including increased insurance coverage amounts or additional insurance coverage and broader indemnity and release provisions, and any additional provisions required by Law (or mandated by the Port Commission pursuant to a policy adopted by the Port Commission in a public meeting) to be included in real property licenses.

12.5. Construction Standards. All construction must be performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

12.6. Reports and Information. During periods of construction, Vertical Developer will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

12.7. Costs of Vertical Project Sole Responsibility of Vertical Developer. Port has no responsibility for any costs of the Vertical Project and Vertical Developer will pay (or cause to be paid) all such costs.

12.8. Construction Rights of Access. During any period of construction, Port and its Agents will have the right to enter areas in which construction is being performed, on reasonable prior written notice during customary construction hours, subject to the rights of tenants and subtenants, and any safety procedures or precautions required by Vertical Developer and/or its contractors, to inspect the progress of the work; provided, however, that Port and its Agents will conduct their activities in such a way to minimize interference with Vertical Developer and its operations to the extent feasible. Nothing in this Agreement, however, will be interpreted to impose an obligation upon Port to conduct such inspections or any liability in connection therewith.

12.9. Regulatory Approvals.

(a) **Port Acting as Owner of Property.** Vertical Developer understands and agrees that Port is entering into this Agreement in its proprietary capacity as the holder of fee title to the Property and not as a Regulatory Agency with certain police powers. Vertical Developer agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Vertical Project can be obtained. Vertical Developer agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Vertical Project will be issued by the appropriate Regulatory Agency, and Vertical Developer understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Vertical Developer will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Vertical Project and/or the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Vertical Developer, at Vertical Developer's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Vertical Project. By entering into this Agreement, Port is in no way modifying or limiting Vertical Developer's obligations to cause the Property to be developed, restored, used and occupied in accordance with all Laws. Vertical Developer further agrees and acknowledges that any time limitations on Port review or approval within this Agreement applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Vertical Developer understands and agrees that Port staff have no obligation to advocate, promote or

lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Vertical Project or other matters related to this Agreement, and any such advocacy, promotion or lobbying will be done by Vertical Developer at Vertical Developer's sole cost and expense. Vertical Developer hereby waives any Claims against the City Parties, and fully releases and discharges the City Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Vertical Project.

(b) Regulatory Approval; Conditions.

(i) Vertical Developer understands that construction of the Vertical Project, including the Deferred Infrastructure, and Vertical Developer's contemplated uses and activities on the Property, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, SFPW, SFDPH, BAAQMD, Cal OSHA and other Regulatory Agencies. Vertical Developer is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

(ii) Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Agreement, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if (1) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could encumber, restrict or adversely change the use of any Port property other than the Property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions; or (2) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions or restrictions under such permit that could restrict or change the use of the Property in a manner not otherwise permitted under this Agreement or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees Port may be subject to as a result of such Regulatory Approval).

(iii) Port will provide Vertical Developer with its approval or disapproval thereof in writing to Vertical Developer within ten (10) business days after receipt of Vertical Developer's written request, or if Port's Executive Director reasonably determines that Port Commission or Board of Supervisors action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Vertical Developer's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Vertical Developer for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

(iv) Vertical Developer will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-site or require off-site improvements, removal, or other measures. Vertical Developer in its sole discretion has the right to appeal or contest any

condition in any manner permitted by Law imposed by any such Regulatory Approval. Vertical Developer will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Vertical Developer will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Vertical Developer to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Vertical Developer's obligation to pay all the costs of complying with any conditions or restrictions. Vertical Developer will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Property.

(v) Without limiting any other Indemnification provisions of this Agreement [**for ground lease parcels:** or the Parcel Lease], Vertical Developer will Indemnify the City Parties from and against any and all Losses which may arise in connection with Vertical Developer's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to develop and construct the Property in accordance with the Scope of Development, except to the extent that such Losses arise from the gross negligence or willful misconduct of any City Party.

(c) **Certain City Regulatory Approvals.** Horizontal Developer and the City have entered into the Development Agreement, which will govern certain land use matters under the Planning Code, including Impact Fees and Exactions. The Port and other City Agencies, with Horizontal Developer's consent, have entered into the ICA specifying certain procedures and standards that will apply when Horizontal Developer seeks Regulatory Approvals for the Horizontal Improvements from other City Agencies. A copy of the Development Agreement has either been made available to Vertical Developer for its review at Port's offices or has been provided to Vertical Developer.

(d) **Compliance.** Vertical Developer is solely responsible for ensuring that the design and construction of the Vertical Project, including without limitation the Deferred Infrastructure (if assigned to and assumed by Vertical Developer in the VCA) comply with all Vertical Development Requirements and applicable Laws at no cost to the Port.

(e) **Noncompliance.** Vertical Developer must pay any fines and penalties and perform any corrective actions imposed for noncompliance with any applicable Laws and Indemnify the Port against any liability arising from such noncompliance, even if the Port is a co-permittee. Vertical Developer will not be entitled to reimbursement from public financing sources for any fines, penalties, and costs of corrective actions related to its construction of Deferred Infrastructure.

12.10. *Conditions to Commencement of Construction of the Vertical Project.*

(a) **Conditions Precedent.** Unless expressly waived by Port, Vertical Developer must satisfy all of the following conditions before Commencement of Construction of the Vertical Project:

(i) **Certification.** Vertical Developer will have delivered to Port a statement certified by its officer as true, correct and complete that (1) it has obtained all Regulatory Approvals required to commence construction of the Vertical Project, (2) it has obtained sufficient financing to commence and complete the Vertical Project, and (3) it has paid the City all Impact Fees and Exactions that are required to be paid prior to commencement of construction of the Vertical Project.

(ii) [**For ground lease parcels only:** **Insurance.** Vertical Developer has in place all insurance required during construction of the Vertical Project under the terms of the Parcel Lease and has provided Port evidence thereof.]

(iii) ***Good Standing.*** There will be no uncured Vertical Developer Default by Vertical Developer under this Agreement [**for ground lease parcels only**: or uncured Event of Default under the Parcel Lease].

(iv) ***Security.*** If any surety bond, sub-guard insurance (or other insurance product), guaranty, or other security is obtained by or for the benefit of Vertical Developer with respect to the payment of any funds or performance obligations associated with the Vertical Project, Vertical Developer will cause to have (1) Port named as a co-obligee to any bond, and (2) Port named as an additional insured or third-party beneficiary with respect to any sub-guard or other insurance product; provided, however, Port's rights under such Bond, insurance product or guaranty will (x) remain subordinate to the rights of any Mortgagee and (y) not be exercised by Port before a Vertical Developer Default.

(v) [**For residential parcels only**: ***Construction Documents.*** The construction documents for the Vertical Project must conform to the Scope of Development. By way of example, the Vertical Project must contain the number of floors and residential units described in the Scope of Development.

(b) ***Conditions for Benefit of the Port.*** The conditions in *Section 12.10(a)* (Conditions Precedent) are solely for the benefit of Port. Only Port may waive any of those conditions, and only to the extent waivable under Law.

(c) ***Effect of Failure of Condition.*** Vertical Developer's failure to satisfy any condition described in *Section 12.10(a)* (Conditions Precedent) will not alone relieve either Party of any obligations that previously arose under this Agreement.

(d) ***Commencement Estoppel.*** Vertical Developer has the right, but not the obligation, to request an estoppel certificate from Port, at no cost to Port, for the benefit of Vertical Developer and any Mortgagee or other lender, stating that Vertical Developer has satisfied the conditions set forth in *Section 12.10*. Any such request will include a certification by Vertical Developer that (i) satisfies the requirements of *Section 12.10(a)(i)* and (ii) that to its actual knowledge, Port is not in default under this Agreement or the Parcel Lease. Port will have at least ten (10) business days to respond to such request.

12.11. *Safety Matters.* Vertical Developer will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining or nearby property, or the risk of injury to members of the public, caused by or resulting from the performance of its development of the Vertical Project. Vertical Developer will erect appropriate construction barricades to enclose the areas of such construction and maintain them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

12.12. *Post-Closing Boundary Adjustments.* The Parties acknowledge that, as development of the 28-Acre Site advances, the description of each parcel of real property may require further refinements, which may require minor boundary adjustments. The Parties agree to cooperate in effecting any required boundary adjustments consistent with *Section 21.2* (Technical Changes). Vertical Developer agrees that all conveyance agreements from Vertical Developers to any Transferees of the Property will include the obligation to cooperate with Port in boundary adjustments.

12.13. *Vertical Developer Outreach Requirement.* The Vertical Project is subject to the administrative design review process set forth in the Pier 70 SUD, which provides an opportunity for third parties to review and comment on an application for design review of the Vertical Project prior to approval by the City's Planning Director. Additionally, as a requirement of this Agreement, Vertical Developer will make an informational presentation regarding the consistency of its application with the Pier 70 SUD and Design for Development to the Port's Central Waterfront Advisory Group ("CWAG") within 30 days of its submittal to the Planning Director. Port will reasonably cooperate with Vertical Developer to schedule and notice this

presentation by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation. If a CWAG meeting cannot be scheduled within 30 days of the submittal, the Vertical Developer will have the option to present at the next scheduled CWAG meeting or to host a public presentation of its design and will provide a minimum of 2 weeks' notice by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation. The presentation is for informational purposes only; any third party wishing to submit a formal public comment on the design of the Vertical Project will be required do so pursuant to the process set forth in the Pier 70 SUD. However, should the Vertical Developer desire to change its design review application to incorporate any feedback received from the presentation, any such changes submitted more than 30 days after the initial submission will reset the 60-day design review period established by the Pier 70 SUD.

13. COMPLETION OF VERTICAL PROJECT.

13.1. Completion; Certificates of Completion. The obligations of Vertical Developer set forth in this Agreement, if any, will be deemed satisfied upon the completion of the Vertical Project, as evidenced by Port's issuance of a Certificate of Completion in accordance with the following terms:

(a) **Submittals.** When Vertical Developer reasonably believes that it has Completed the Vertical Project (excluding the Deferred Infrastructure), it may submit to Port an Architect's Certificate in the form attached as *Exhibit XX* (or such other form as approved by the Chief Harbor Engineer), and request that the Port issue a Certificate of Completion. When Vertical Developer reasonably believes that it has Completed the Deferred Infrastructure, it may submit to Port an Engineer's Certificate in accordance with the procedures set forth in [*Section XX* of the Horizontal DDA.]

(b) **Deferred Items.** With respect to the Vertical Project, if there remain uncompleted (i) customary punch list items, (ii) landscaping, or (iii) exterior finishes (to the extent Vertical Developer can demonstrate to Port's reasonable satisfaction that such finishes would be damaged during the course of later construction of interior improvements) (collectively "Deferred Items"), Port may reasonably condition approval of the Certificate of Completion upon provision of security or other assurances in form, substance and amount satisfactory to Port that all the Deferred Items will be diligently pursued to completion.

(c) **Port Response.** Port will respond within thirty (30) days after its receipt of the Engineer's Certificate and Architect's Certificate. If Port does not issue a Certificate of Completion for the Vertical Project substantially in the form of *Exhibit XX* as requested under *Subsection 13.1(a)* (Submittals), then Port will deliver to Vertical Developer a notice specifying the reasons it did not issue the requested Certificate of Completion and the reasonable acts or measures that Vertical Developer must take to obtain a Certificate of Completion. Vertical Developer may submit revised Engineer's and Architect's Certificates and a new request for a Certificate of Completion under *Subsection 13.1(a)* (Submittals) at any time after completing the specified acts or measures.

(d) **Effect of Certificate of Completion.** For purposes of this Agreement only, the Certificate of Completion will be the Port's conclusive determination that Vertical Developer has Completed the Vertical Project and effective upon such issuance, other than the terms and conditions of this Agreement that expressly survive termination, this Agreement will terminate. The Port's determination will not impair Vertical Developer's release as provided in *Article 4* (Release), Port's right to Indemnity under Vertical Developer's obligation to Indemnify the City Parties in *Section 12.9(b)(v)* and *Article 18* (Indemnification), or Port's right, to reimbursement of Port and City Costs as provided under *Section 14.4* (Survival), all of which expressly survive termination of this Agreement. The Port's issuance of a Certificate of Completion will not relieve Vertical Developer or any other person from the Vertical Development Requirements or compliance with applicable Laws, including applicable building,

fire, or other code requirements, conditions to occupancy of any improvement, or other applicable Laws. This *Section 13.1(d)* will survive the expiration or earlier termination of this Agreement.

13.2. for ground lease parcels: Record Drawings.

(a) Vertical Developer will furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to the Vertical Project within ninety (90) days following completion of the Vertical Project. Record Drawings must be in the form of full-size, hard paper copies and converted into electronic format as (1) full-size scanned TIF files, and (2) AutoCad files of the completed and updated construction documents, as further described below, and in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "Record Drawings" means drawings, plans and surveys showing the construction as built on the Property and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Vertical Developer fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following an additional written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such construction, and the actual, third-party cost of preparing such Record Drawings must be reimbursed by Vertical Developer to Port promptly after invoice of the same is delivered to Vertical Developer. Nothing in this Section will limit Vertical Developer's obligations, if any, to provide plans and specifications in connection with the construction under applicable regulations adopted by Port in its regulatory capacity. Vertical Developer will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Vertical Developer's request, Port will provide Vertical Developer with a release from liability for future use of the applicable materials, in a form acceptable to Vertical Developer and Port.

(b) **Record Drawing Requirements.** Record Drawings must be no less than (24" x 36"), with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing will have a Port-assigned number placed onto the title block prior to scanning. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings will be scanned as a test, prior to execution of this requirement in full.

(c) **AutoCad Requirements.** The AutoCad files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s) or DVD(s), as requested by Port. All X-REF, block and other referenced files must be coherently addressed within the environment of the compact disc or DVD, at Port's election. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting. A minimum of ten (10) complete drawing files, including all referenced files, is required to be transmitted to Port as a test, prior to execution of this requirement in full.

(d) **Changes in Technology.** Port reserves the right to revise the format of the required submittals set forth in this *Section 13.2* as technology changes and new engineering/architectural software is developed.

14. PORT/CITY COSTS.

14.1. Port Costs. Port and the City are entitled to reimbursement for, respectively, Port Costs and City Costs incurred in connection with performing its obligations under this Agreement and any changes to this Agreement requested by Vertical Developer. Upon the request of Vertical Developer, Port and Vertical Developer will meet and confer regarding the Port Costs and City Costs likely to be incurred in connection with this Agreement. Except to the

extent specifically set forth herein, Port will not be entitled to collect any other fee or reimbursement from Vertical Developer in connection with the performance of Port's obligations under this Agreement in its proprietary capacity.

14.2. Reporting of Port Costs. Within ninety (90) days following the end of each calendar quarter during the term of this Agreement and within ninety (90) days following the expiration or termination of this Agreement, Port will deliver to Vertical Developer a summary of Port Costs (together with City Costs invoiced as of such date) incurred during such quarter (the "**Port Costs Report**"). The summary will be in a reasonably detailed form and will include (i) a general description of the services performed and Port Costs incurred, (ii) cost for Port staff time and cost for the City Attorney's staff time spent on the Vertical Project, (iii) the transaction costs incurred by the City, (iv) the fees and costs incurred and paid by Port under the ICA, and (v) the fees and costs of non-City professionals and copies of invoices from such non-City professionals. Port will provide such supporting documentation as Vertical Developer may reasonably request to verify that the Port Costs were incurred in accordance with this Agreement. Port and Vertical Developer will cooperate with one another to develop a reporting format that satisfies the reasonable informational needs of Vertical Developer to justify expenditures of Port Costs in accordance with this Agreement without divulging any privileged or confidential information of Port, the City, or their respective contractors. The Port Costs Report will be binding on Vertical Developer in the absence of error demonstrated by Vertical Developer within six (6) months of Vertical Developer's receipt of the same.

14.3. Payment of Port Costs. Vertical Developer will reimburse Port for Port Costs and City Costs described in each Port Costs Report no later than thirty (30) days after its receipt of the Port Costs Report from Port. While the Parties currently anticipate the Port Cost Reports will be delivered quarterly, Port will have the right to submit monthly Port Cost Reports. The Parties will meet and confer in good faith to resolve any disputes regarding a Port Costs Report. Port will have the right to terminate or suspend any work for Vertical Developer under this Agreement upon Vertical Developer's failure to pay amounts due and owing hereunder, and continuing until Vertical Developer makes payment in full to Port.

14.4. Survival. Vertical Developer's obligation to reimburse Port for Port Costs and City Costs incurred during the term of the Agreement will survive the expiration or termination of this Agreement.

15. DEFAULTS; REMEDIES.

15.1. Default by Vertical Developer. The occurrence after the Closing Date of any one of the following events or circumstances will constitute a "**Vertical Developer Default:**"

- (a) Vertical Developer causes or permits the occurrence of a Transfer not permitted under this Agreement;
- (b) Vertical Developer fails to pay when due any amount required to be paid hereunder, or fails to pay any taxes or assessments on the Property when due (including CFD and IFD assessments), and such failure continues for a period of five (5) business days following Vertical Developer's receipt of notice thereof from the Port;
- (c) **[for residential condo parcels:** Vertical Developer fails to cause the Commencement of Residential Construction to occur within thirty (30) months of the Closing Date, subject to Force Majeure ("**Required Construction Commencement Date**");]
- (d) **[for fee parcels:** Vertical Developer is in default under the Restrictive Covenants and fails to cure the same in accordance with the terms of such documents within a reasonable period of time (or such shorter period of time as may be specified in the Restrictive Covenant, if applicable) **[for ground lease parcels:** An Event of Default (*i.e.*, after expiration of all applicable notice and cure periods) occurs under the Ground Lease];

(e) **[for ground lease parcels:** Vertical Developer files a petition for relief, or an order for relief is entered against Vertical Developer, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Vertical Developer are not dismissed or stayed within one hundred twenty (120) days;]

(f) **[for ground lease parcels:** A writ of execution is levied on this Agreement which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Vertical Developer, which appointment is not dismissed within one hundred twenty (120) days;]

(g) **[for ground lease parcels:** Vertical Developer makes a general assignment for the benefit of its creditors;]

(h) Vertical Developer fails to perform any other obligation required to be performed under this Agreement by Vertical Developer, and such failure continues beyond any the period of time for cure thereof or the expiration of any grace period specified in this Agreement therefor, or if no such cure or grace period is specified, within thirty (30) days after Vertical Developer's receipt of notice thereof from the Port as appropriate, or in the case of a default that is curable but is not susceptible of cure within thirty (30) days, Vertical Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed one hundred and twenty (120) days;

(i) **[if applicable:** Vertical Developer fails to provide Adequate Security to the extent required under this Agreement, or once it has provided Adequate Security fails to maintain the same as required under this Agreement, and such failure continues for thirty (30) days following receipt of notice from Port (provided, that Vertical Developer will immediately, upon receiving notice from Port to such effect, suspend all activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the Property during any period during which Adequate Security are not maintained as required by this Agreement); and

(j) **[if applicable:** the obligor of any Adequate Security commits a default under the applicable security instrument or revokes or refuses to perform as required under the Adequate Security and Vertical Developer does not replace the Adequate Security within thirty (30) days following Vertical Developer's receipt of notice from Port; provided, that (i) Vertical Developer will immediately, upon receiving notice from Port to such effect, suspend all activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the Property during any period during which the Adequate Security is maintained as required by this Agreement, (ii) any cure period for a default under the Adequate Security will run concurrently with the above thirty (30) day period, and (iii) upon receipt by Port of any replacement Adequate Security Port will return, if in its possession or control, the original Adequate Security.

15.2. Default by Port. It will constitute a "Port Default" under this Agreement, if after the Closing Date, Port fails to perform any of its agreements or obligations under this Agreement, and such failure continues beyond the period of time for cure thereof or the expiration of any grace period specified in this Agreement therefor, or if no such cure or grace period is specified, within thirty (30) days after Port's receipt of notice thereof from Vertical Developer, or, in the case of a default that is curable but is not susceptible of cure within thirty (30) days, if the Port fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion, but in no event to exceed one hundred and twenty (120) days.

15.3. *Port Remedies for Vertical Developer Default.*

(a) **General.** **[for Parcel lease parcels:** During the continuance of a Vertical Developer Default subject to *Article 16*, and the limitations set forth in Section 25 of the Parcel Lease (including, without limitation, Section 25.4 of the Parcel Lease) Port will have all rights and remedies described in Section 25 of the Parcel Lease; provided, however, notwithstanding anything to the contrary contained in this Agreement or the Parcel Lease, any right to cure and any remedy available to Port regarding any Vertical Developer Default under the Workforce Development Plan is limited to those rights and remedies set forth in the Workforce Development Plan. .

[for fee parcels: During the continuance of a Vertical Developer Default, Port will have all rights and remedies available at law or in equity, including the right to collect on the Adequate Security and the right to institute such proceedings as may be necessary, including action to cure the default or to seek specific performance or other injunctive relief, and the remedies set forth in the Special Provisions; provided, however, notwithstanding anything to the contrary contained in this Agreement, any right to cure and any remedy available to Port regarding any Vertical Developer Default under the Workforce Development Plan is limited to those rights and remedies set forth in the Workforce Development Plan.

(b) **[for fee parcels only: Failure to Commence Residential Construction.** In addition to any other remedy available to Port, with respect to any Vertical Developer Default under *Section 15.1(c)*, if Vertical Developer does not commence construction of the Vertical Project by the Required Construction Commencement Date, the provisions of *Schedule 15.3* will apply.

15.4. *Vertical Developer's Remedies for Port Default.*

[For ground lease parcels: In the event of a Port Default after the Closing Date, Vertical Developer will have the remedies set forth in **[Section 28 of the Parcel Lease.]**

[For fee parcels only: In the event of a Port Default after the Closing Date, Vertical Developer's remedy is limited to an action for specific performance. Port will not be liable to Vertical Developer for any monetary damages whether caused by a Port Default and in no event will Port be liable for any actual, consequential, incidental or punitive damages.]

15.5. Limitation on Port Liability. Except as expressly set forth in *Section 10.4(c)* and *Section 18.4*, Port will not have any liability whatsoever for monetary damages, and in no event, will Port be liable for any actual, consequential, incidental or punitive damages, including, but not limited to, lost opportunities, lost profits or other damages of a consequential nature under this Agreement.

15.6. No Implied Waivers. No waiver made by a waiving Party with respect to the performance or manner or time thereof (including an extension of time for performance) of any obligations of another Party, or of any condition to the waiving Party's own obligations, will be considered a waiver of the waiving Party's rights with respect to any obligation of another Party or any condition to the waiving Party's own obligations beyond those expressly waived in writing.

15.7. Limitation on Personal Liability. No natural person, including any commissioner, member, supervisor, officer, director, employee, representative, or attorney of a Party, will be personally liable to another Party in the event of any default or for any amount that may become due to a Party under this Agreement, provided the foregoing will not limit any liabilities that exist under a security instrument or that exist under applicable law.

16. FINANCING; RIGHTS OF MORTGAGEES.

[For lease parcels: The rights and obligations of each Party related to any Mortgage (as defined in the Parcel Lease) is set forth in the Parcel Lease.

[For fee parcels: The rights and obligations of each Party related to any deed of trust, mortgage, or other security instrument against the Property is set forth in *Schedule 16*. **[Note: Include final provision from Parcel Lease.]**

17. LABOR MATTERS.

17.1. *Compliance with Workforce Development Plan.* In connection with the construction of the Vertical Project, Vertical Developer agrees to comply with all applicable provisions of the Workforce Development Plan.

17.2. *Prevailing Wages.* Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Property comprise a public work if paid for in whole or part out of public funds. The terms “public work” and “paid for in whole or part out of public funds” as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Vertical Developer agrees that any person performing labor for Vertical Developer on any public work at the Property will be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco County. Vertical Developer will include in any contract for such labor a requirement that all persons performing labor under such contract will be paid not less than the highest prevailing rate of wages for the labor so performed and a requirement that such contractor provide, and deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Property.

18. INDEMNIFICATION.

18.1. *Indemnification by Vertical Developer.*

(a) General Indemnity.

(i) *Prior to Close of Escrow.* If Vertical Developer accesses the Property prior to the Closing Date, then Vertical Developer must Indemnify the City Parties against any and all Losses related to such access, including Losses related to Hazardous Materials, in accordance with the License. Vertical Developer’s Indemnification obligation also includes the obligations described in *Section 12.9(b)(v)* related to Regulatory Approvals.

(ii) *Following Close of Escrow:* **[For Lease Parcels only:** Following the Close of Escrow, Vertical Developer’s obligation to Indemnify the City Parties will be in accordance with the Parcel Lease]

[For Fee Parcels only: Following Close of Escrow, except to the extent caused by the gross negligence or willful misconduct of a City Party, Vertical Developer must Indemnify the City Parties against any and all Losses first arising from and after the Close of Escrow directly or indirectly from:

(1) Vertical Developer’s failure to obtain any Regulatory Approval or to comply with any Regulatory Requirement for the Vertical Project or the Deferred Infrastructure as more particularly set forth in *Section 12.9(b)(v)*;

(2) any personal injury or property damage occurring on any portion of the Property while under Vertical Developer’s ownership or control;

(3) any Vertical Developer Party’s acts or omissions in relation to construction, management, or operations at the Property including patent and latent defects and mechanic’s or other liens to secure payment for labor, service, equipment, or material;

(4) In addition, to the foregoing, Vertical Developer will Indemnify the City Parties from and against all Losses (if a City Party has been named in any action or other legal proceeding) incurred by a City Party arising directly or indirectly out of or

connected with contracts or agreements (i) to which no City Party is a party, (ii) entered into by Vertical Developer in connection with its performance under this Agreement or any Assignment and Assumption Agreement, except to the extent such Losses were caused by the gross negligence or willful misconduct of a City Party. For purposes of the foregoing sentence, no City Party will be deemed to be a “party” to a contract solely by virtue of having approved the contract under this Agreement (e.g., an Assignment and Assumption Agreement).

[For fee Parcels only: Hazardous Materials Indemnity. In addition to the Indemnity under *Section 18.1(a)* (General Indemnity), the terms and provisions of *Schedule 18.1* will apply.

18.2. Indemnification for Breach of Representations. Vertical Developer agrees to Indemnify, defend and hold harmless the City Parties from and against any and all Losses arising from any breach of express representation, warranty or covenant by made by Vertical Developer in *Section 21.3* (Representations).

18.3. Defense of Claims. Subject to the express terms of any Indemnity obligation hereunder, Vertical Developer’s Indemnification obligations under this Agreement are enforceable regardless of the active or passive negligence of the City Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the City Parties. Vertical Developer specifically acknowledges that it has an immediate and independent obligation to defend the City Parties from any Loss that actually or potentially falls within the Indemnification obligations of Vertical Developer, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Vertical Developer and continues at all times thereafter until finally resolved. Vertical Developer’s Indemnification obligations under this Agreement are in addition to, and in no way, will be construed to limit or replace, any other obligations or liabilities which Vertical Developer may have to Port in this Agreement, at common law or otherwise.

18.4. Limitations of Liability. It is understood and agreed that no commissioners, members, officers, agents, or employees of the City Parties will be personally liable to Vertical Developer, nor will any direct or indirect partners, members or shareholders of Vertical Developer or its or their respective officers, directors, agents or employees (or of their successors or assigns) be personally liable to the City Parties, in the event of any default or breach of this Agreement or for any amount that may become due under the terms of this Agreement; provided, that the foregoing will not release obligations of a Person that otherwise has liability for such obligations, such as (i) the general partner of a partnership that, itself, has liability for the obligation or (ii) the obligor under any Adequate Security covering such obligation.

18.5. Survival of Indemnification Obligations. The terms and provisions of this *Article 18* will survive the expiration or termination of this Agreement.

19. TRANSFER AND ASSIGNMENTS.

19.1. Before Close of Escrow. Vertical Developer’s option to [purchase the Property] [lease the Leasehold Estate] is personal to Vertical Developer. Accordingly, Vertical Developer may not Transfer this Agreement before Close of Escrow without the prior written consent of Port, which may be granted, withheld, or conditioned in its sole discretion and in Port’s reasonable discretion for a Transfer to an Affiliate. The Parties agree that if Port consents to a Transfer, all Net Transfer Proceeds will be applied as followed:

(a) First, to pay Port’s Attorneys’ Fees and Costs associated with Port’s review of the Transfer; and

(b) Second, all remaining proceeds to Port to be deposited into the [Pier 70 Special Facility Revenue Account] or, if not required to be so deposited, in the [Pier 70 Project Account] and thereafter distributed in accordance with [Section ___ of the Financing Plan (Exhibit XX to the DDA)].

19.2. *Additional Definitions.*

“**Affiliate**” means any Person directly or indirectly Controlling, Controlled by or under Common Control with the other Person in question.

“**Assignment**” means an assignment, conveyance, hypothecation, pledge (other than from and after Close of Escrow, a pledge in connection with any mezzanine financing which will not require prior Port approval), or otherwise transfer of all or any of Vertical Developer’s interest in this Agreement.

“**Control**” means with respect to any Person (a) the possession, directly or indirectly, of the power to direct or cause the direction of the day to day management, policies or activities of such Person whether through ownership of voting securities, by contract or otherwise (excluding customary limited partner or non-managing member approval rights, or (b) the ownership (direct or indirect) of more than fifty percent (50%) of the profits or capital of another Person, or (c) the ownership (direct or indirect) of more than fifty percent (50%) of the ownership interest of such Person (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof). “**Controlled**” and “**Controlling**” have correlative meanings.

“**Excluded Transfer**” means any of the following: (a) the exercise of customary remedies under mezzanine financing of Vertical Developer or any constituent owner thereof; (b) the exercise of customary limited partner or non-managing member remedies under a partnership or limited liability company operating agreement, as applicable; (c) a change resulting from death or legal incapacity of a natural person; or (d) the sale, transfer or issuance of less than the Controlling interest of stock of Vertical Developer that is listed on a nationally or internationally recognized stock exchange in a single transaction or a related series of transactions.

“**Managing Party**” means, with respect to any Person, both (a) the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management, policies or activities of Vertical Developer whether through ownership of voting securities, by contract or otherwise (excluding customary limited partner or non-managing member approval rights) and (b) the ownership (direct or indirect) of more than ten percent (10%) of the profits or capital of Vertical Developer.

“**Net Transfer Proceeds**” means before Close of Escrow, Transfer Proceeds less the transferor Vertical Developer’s reasonable Attorneys’ Fees and Costs incurred by Tenant in connection with a Transfer.

“**Non-Cash Consideration**” means consideration received by Tenant in connection with a Sale that is not Cash Consideration.

“**Significant Change**” means any change in the direct or indirect ownership of Vertical Developer that results in a change in Control of Vertical Developer provided, however, in no event will any Excluded Transfer be deemed a Significant Change.

“**Transfer**” means an Assignment or a Significant Change.

“**Transfer Proceeds**” means all consideration received by or for the account of Vertical Developer in connection with a Transfer, including Cash Consideration, the principal amount of any loan made by Vertical Developer to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price.

19.3. [for leasehold parcel]: After Close of Escrow. After the Close of Escrow, Vertical Developer will be permitted to Transfer all or any of its interest or rights in this Agreement in conjunction with a Transfer permitted by the Parcel Lease or approved by Port in accordance with the Parcel Lease. In addition, from and after an Assignment of all of the transferor’s interest in this Agreement, the transferor will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Assignment. In no event will the transferor be liable for a new default first arising after the date of such Assignment. The

effectiveness of any Assignment hereunder is not in any way to be construed to relieve the transferor vertical developer of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor vertical developer hereunder before the date of such Assignment.

19.4. [for fee parcel]: After Close of Escrow.

(a) Vertical Developer's Right to Transfer Prior to Certificate of Completion.

(i) Conditions to Transfer Before Certificate of Completion. Subject to **Sections 19.4(a)(iii) and 19.4(a)(vi)**, before Port's issuance of a Certificate of Completion, Vertical Developer will not suffer or permit any Transfer to occur, without the prior written consent of Port, which consent may not be unreasonably withheld by Port if each of the following conditions is satisfied:

(1) In the case of an Assignment only, the proposed transferee executes and delivers an Assignment and Assumption Agreement, which Assignment and Assumption Agreement must contain:

(A) An express assumption by the proposed transferee, for itself and its successors and assigns, and expressly for the benefit of Port, of all of the obligations of Vertical Developer arising from or after the effective date of the Transfer under this Agreement and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to this Agreement directly relating to the Project, and an express agreement by the proposed transferee to be subject to all of the conditions and restrictions to which Vertical Developer is subject;

(B) A representation by the proposed transferee that it has conducted a thorough investigation and due diligence of the Property; and

(C) A release by the proposed transferee of the Indemnified Parties and the State Lands Indemnified Parties and waiver of any and all Losses against the Indemnified Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the Indemnified Parties arising prior to the effective date of the Transfer.

(2) In the case of a Significant Change only, Vertical Developer delivers to Port, a certificate setting forth the purchaser or purchasers of the ownership interest resulting in the Significant Change, purchase price of such interest, any Net Transfer Proceeds owed to Port, and a reaffirmation from Vertical Developer that it will continue to be obligated under all the terms and conditions of this Agreement, all certified by Vertical Developer's chief financial officer as true, accurate, and complete, the form of which is attached hereto as **Exhibit XX** ("**Significant Change Certificate**").;

(3) All instruments and other legal documents involved in effectuating the Transfer reasonably requested by Port, including all documentation necessary for Port to confirm the amount of Port's share of Transfer Proceeds, has been submitted to Port for its review and reasonable approval, or at the request of Vertical Developer, such documents are made available for Port's review at Vertical Developer's office in San Francisco;

(4) There is no Event of Default or Unmatured Event of Default on the part of Vertical Developer under this Agreement or any of the other documents or obligations to be assigned to the proposed transferee where Vertical Developer or proposed transferee have not made provisions to cure the applicable default, which provisions are satisfactory to Port in its sole discretion;

(5) Subject to **Section 19.4(a)(i)(6)**, (A) in the case of a Significant Change, Vertical Developer must be a Qualified Transferee immediately following

the consummation of such Significant Change; and (2) in the case of an Assignment, the proposed transferee is a Qualified Transferee;

(6) If Vertical Developer (in the case of a Significant Change) or proposed transferee (in the case of an Assignment) does not satisfy the Net Worth Requirement, Vertical Developer or the proposed transferee, as applicable, will have the right to deliver a Net Worth Guaranty in lieu of satisfying the Net Worth Requirement. Under the Net Worth Guaranty, the Net Worth Guarantor, among other things, will:

(A) guaranty performance of all of Vertical Developer's obligations under this Agreement in an amount not to exceed the Net Worth Requirement;

(B) covenant that it will throughout the term of the Net Worth Guaranty, maintain the Net Worth Requirement; and

(C) provide Port as of the first day of each calendar year, a statement certified by its chief financial officer, or if the Net Worth Guarantor is an individual, a certified public accountant, that the Net Worth Guarantor continues to meet the Net Worth Requirement and that to his/her actual knowledge, he/she is not aware of any facts that would cause the Net Worth Guarantor to not meet the Net Worth Requirement.

The Net Worth Guaranty will otherwise be in form and substance reasonably satisfactory to Port. The Net Worth Guaranty will terminate when the Vertical Developer benefiting from the Net Worth Guaranty meets the Net Worth Requirement. Vertical Developer and the Net Worth Guarantor will provide Port with its financial statements and other information necessary to substantiate its position that it meets the Net Worth Requirement and that the Net Worth Guaranty should terminate.

(7) Vertical Developer provides to Port an estoppel certificate substantially in the form attached hereto as *Exhibit XX*, which estoppel certificate will be effective as of the effective date of Transfer; [and]

(8) Port receives on or prior to the effective date of Transfer sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Transfer provided, however, if Port has not delivered to Vertical Developer an invoice for Attorney's Fees and Costs prior to the effective date of Transfer, Vertical Developer will reimburse Port for same within ten (10) business days of receipt of such invoice[.] [; and]

(9) **[for FC Affiliate fee parcels only]**: Port receives on or prior to the effective date of Transfer, (A) Port's share of Net Transfer Proceeds, as described in *Schedule 19.4*, and (B) a settlement statement relating to the Transfer or other evidence, reasonably satisfactory to Port, of Port's share of Net Transfer Proceeds.]

(10) *Additional Definitions.*

"**Net Worth Guarantor**" means a Person satisfying the Net Worth Requirement that is the guarantor under the Net Worth Guaranty.

"**Net Worth Guaranty**" means a guaranty of performance of all the obligations under this Agreement, in an amount not to exceed the Net Worth Requirement, and otherwise in form and substance reasonably satisfactory to Port, delivered to Port by a Person satisfying the Net Worth Requirement.

(ii) *No Limitation.* It is the intent of this Agreement, to the fullest extent permitted by Law and equity, that no Transfer of this Agreement, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of the benefits under this Agreement or any rights or remedies or controls provided in or resulting from this Agreement with respect to the Premises that Port would have had, had there been no such Transfer.

(iii) **Mortgaging of Leasehold.** Notwithstanding anything herein to the contrary, at any time during the Term, Vertical Developer has the right, without Port's consent, to sell, assign, encumber or transfer its interest in this Agreement to a Lender or other purchaser in connection with the exercise of remedies under the provisions of a Mortgage, subject to the limitations, rights and conditions set forth in ***Schedule 16.***

(iv) **Limitation on Liability.** From and after an Assignment of all of the transferor's interest in this Agreement or Leasehold Estate, the transferor will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Assignment. In no event will the transferor be liable for a new default first arising after the date of such Assignment. The effectiveness of any Assignment hereunder is not in any way to be construed to relieve the transferor tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor tenant hereunder before the date of such Assignment.

(v) **Notice of Significant Changes; Reports to Port.** Vertical Developer will promptly notify Port of any and all Significant Changes. At such time or times as Port may reasonably request, Vertical Developer must furnish Port with a statement, certified as true and correct by an officer of Vertical Developer, setting forth all of the constituent members of Vertical Developer and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Vertical Developer, their names and the extent of such interest.

(vi) **Transfers Not Requiring Port Consent Before Certificate of Completion.** Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Transfer to a Vertical Developer Affiliate or a Significant Change in which there is no change of the Managing Party of Vertical Developer, subject to all of the following conditions: (A) at least five (5) business days prior to such Transfer, Vertical Developer provides notice thereof to Port; and (B) the conditions set forth in ***Sections 19.4(a)(i)(1)—19.4(a)(i)(7) and 19.4(a)(i)(8)*** have all been met.

(b) **Vertical Developer's Right to Transfer After Certificate of Completion.** Notwithstanding any other provision of this Agreement, the provisions relating to Transfers will not apply from and after the issuance of a Certificate of Completion.

(c) **No Restriction on Certain Matters.** The provisions of this ***Article 19*** will not be deemed to prohibit or otherwise restrict (1) the granting of authorizations to facilitate the development, operation and use of the Property, in whole or in part, (2) the grant or creation of a Mortgage, (3) the sale or transfer of the Property or a portion thereof or any interest therein pursuant to foreclosure or the exercise of a power of sale contained in a Mortgage or any other remedial action in connection therewith, or a conveyance or transfer thereof in lieu of foreclosure or exercise of such power of sale, or (4) any Transfer to the Port, the City, City Agencies or any other Governmental Entity.

(d) **Conditions Precedent.** Vertical Developer's rights and obligations under this Agreement may be Transferred only (1) if the Close of Escrow has occurred, in conjunction with the Transfer of the portion of the Transferred Property to which the rights and obligations apply and (2) subject to ***Section 19.5***. The Transferee, upon taking title of the Transferred Property will succeed to all of Vertical Developer's rights (including without limitation the right to Transfer) and obligations under this Agreement.

19.5. Limitation on Liability. From and after a Transfer, the Transferor will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Transfer. In no event will Transferor be liable for a new default first arising after the date of such Transfer.

19.6. Restrictions on Port Transfer. This Agreement will not restrict Port's right to Transfer all or any portion of the Property to which it holds title. Unless otherwise prohibited by

Law, Port agrees, however, not to Transfer any portion of the Property or any interest therein acquired by it to any Person where such Transfer would preclude Port's or Vertical Developer's performance under this Agreement or the uses, densities, rights or intensity of development contemplated under this Agreement or the Vertical Development Requirements.

19.7. Sale of Individual Condominium Units. [Note: Only for Fee Parcels]

(a) Non-Applicability of Transfer Restrictions.

(i) Notwithstanding any other provision of this Agreement, the provisions relating to Transfers will not apply to buyers of individual Condominium Units and parking spaces for which, on or before the date of sale, a certificate of occupancy has been issued.

(ii) Except with respect to Inclusionary Units, which will be handled according to the provisions set forth in the Housing Plan, Port will not: (A) require notice or assumption of obligations for sales or subsequent re-sales of any such Condominium Units; (B) require notice or assumption of obligations, if any, for the transfer of Condominium Unit project condominium common areas; nor (C) impose any obligations with respect to completion of the improvements on individual Condominium Units for which a Certificate of Occupancy has been issued.

(iii) Vertical Developer will include in each purchase and sale agreement for a Condominium Unit a full waiver and release of any and all Claims against the City Parties resulting from Vertical Developer's completion of, or failure to complete, all or any part of the Vertical Project or Deferred Infrastructure, Horizontal Developer's completion of, or failure to complete, all or any part of the Horizontal Improvements, the Port or the City's failure to complete any part of the Pier 70 Project, and the payment by the buyer or seller of any Condominium Unit of any fees set forth in the Transfer Fee Covenant.

(iv) This *Section 19.7* is for the express benefit of Vertical Developer, and nothing herein will be construed to: (A) confer on an individual Condominium Unit purchaser the status of Transferee or Vertical Developer or (B) provide such purchaser, as opposed to Vertical Developer, with the right to request a Certificate of Completion for an individual Condominium Unit.

(v) No buyer of any individual Condominium Unit will be subject to the obligations or have the rights of Vertical Developer under this Agreement, the Restrictive Covenants or the obligations of Horizontal Developer under the Horizontal DDA, including without limitation, obligations for construction of the Deferred Infrastructure if applicable or the right to request a Certificate of Completion. The Parties hereto acknowledge that any of the Vertical Development Requirements that are binding on Condominium Units, including any income restrictions, will be included in recorded documents that run with the applicable Condominium Units.

20. PORT AND CITY SPECIAL PROVISIONS.

Vertical Developer will comply with the Port and City Special Provisions attached hereto as *Exhibit XX*.

21. GENERAL PROVISIONS. [PLACEHOLDER: REVISE WITH FINAL APPLICABLE SPECIAL PROVISIONS DOCUMENT FROM JOANNE]

21.1. Notices. Any notices required or permitted to be given under this Agreement will be in writing and will be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices will be addressed as follows:

Port:

Port of San Francisco
Port General Counsel
Office of the City Attorney
Pier 1
San Francisco, CA 94111
Re: Pier 70 (**Identify Parcel**)

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Director of Real Estate and
Development
Re: Pier 70 ([Identify Parcel])

with a copy to:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: General Counsel
Re: Pier 70 ([Identify Parcel])

Vertical Developer:

with a copy to:

or such other address as either party may from time to time specify in writing to the other party. Any notice will be deemed given when actually delivered (or when delivered is refused, if applicable) if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

21.2. Amendments/Technical Changes. This Agreement may be amended or modified only by a written instrument signed by the Vertical Developer and Port. Without limiting the foregoing, Vertical Developer and the Port may correct any inadvertent error to this Agreement or any of its exhibits or implementing documents that is contrary to the Parties' intention in the identification or characterization of or any reference to any title exception, legal description, boundaries of any parcel, map or drawing, or the text, or otherwise agree to minor changes that do not materially and adversely affect the Vertical Project or Deferred Infrastructure (as reasonably determined by Vertical Developer). Any agreed change will be effected by a signed memorandum or replacement pages. A memorandum or replacement sheet will not be deemed an amendment of this Agreement or the relevant document as long as any adjustments are relatively minor and do not result in a material change as determined by the Port in consultation with counsel. Any memorandum will become a part of this Agreement or the affected document when fully executed.

21.3. Representations and Warranties of Vertical Developer. Vertical Developer represents and warrants to Port as of the Effective Date and as of the Close of Escrow as follows:

(a) That Vertical Developer is a duly organized, validly existing, and in good standing under the laws of the State of _____. Vertical Developer has all requisite power and authority to conduct its business as presently conducted.

(b) That Vertical Developer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Vertical Developer has been so suspended, disbarred, disciplined or prohibited from

contracting with any governmental agency, it will immediately notify the Port of same and the reasons therefore together with any relevant facts or information requested by Port. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) That this Agreement and all documents executed by Vertical Developer: (i) are and at the time of Closing will be duly authorized, executed and delivered by Vertical Developer; (ii) are and at the time of Closing will be legal, valid and binding obligations of Vertical Developer; and (iii) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject. The Transaction Documents will be a legal, valid and binding obligation of Vertical Developer, enforceable against Vertical Developer in accordance with its terms.

(d) That Vertical Developer has all requisite power and authority to execute and deliver the Transaction Documents and to carry out and perform all of the terms and covenants of the Transaction Documents.

(e) None of Vertical Developer's formation documents, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Vertical Developer to enter into and perform all of the terms and covenants of the Transaction Documents. Vertical Developer is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Vertical Developer of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened lawsuits or proceedings or undischarged judgments affecting Vertical Developer before any court, governmental agency, or arbitrator that is reasonably expected to materially and adversely affect the enforceability of the Transaction Documents or the business, operations, assets or condition of Vertical Developer.

(f) The execution, delivery and performance of the Transaction Documents (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Vertical Developer or by which Vertical Developer's assets may be bound or affected, (B) any Law, or (C) [the articles of incorporation or the bylaws of Vertical Developer], and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Vertical Developer (other than the lien of a Mortgage in accordance with this Agreement or the Parcel Lease).

(g) There is no material adverse change in Vertical Developer's financial condition and Vertical Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and Vertical Developer is not in default or claimed default under any agreement for borrowed money.

(h) Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties will survive the Closing Date.

21.4. Governing Law. This Agreement will be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code. All legal actions related to this Agreement will be instituted in the Superior Court of the City and County of San Francisco, State of California, in any other appropriate court in the City or, if appropriate, in the Federal District Court in San Francisco, California.

21.5. Merger of Prior Agreements. This Agreement, together with the exhibits hereto, contain any and all representations, warranties and covenants made by Vertical Developer and Port and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits hereto.

21.6. Parties and Their Agents. The term “**Vertical Developer**” as used herein will include the plural as well as the singular. If Vertical Developer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Vertical Developer will be joint and several. As used herein, the term “**Agents**” when used with respect to either party will include the agents, employees, officers, contractors and representatives of such party.

21.7. Interpretation of Agreement.

(a) **Exhibits.** Whenever an “Exhibit” is referenced, it means an exhibit or attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

(b) **Captions.** Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of this Agreement.

(c) **Words of Inclusion.** The use of the term “including”, “include”, “such as” or words of similar import when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) **No Presumption Against Drafter.** This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including California Civil Code Section 1654).

(e) **Costs and Expenses.** The Party on which any obligation is imposed in this Agreement will be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) **Agreement References.** Wherever reference is made to any provision, term or matter “in this Agreement,” “herein” or “hereof” or words of similar import, the reference will be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered section or paragraph of this Agreement or any specific subdivision of this Agreement.

21.8. Attorneys’ Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys’ fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney’s services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney’s Office.

21.9. *Time of Essence.* Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

21.10. *No Merger.* The obligations contained herein that expressly survive the Closing will not merge with the transfer of title to the Property but will remain in effect until fulfilled.

21.11. *Non-Liability of City Officials, Employees and Agents.* Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City will be personally liable to Vertical Developer, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Vertical Developer, its successors and assigns, or for any obligation of City under this Agreement.

21.12. *Conflicts of Interest.* Through its execution of this Agreement, Vertical Developer acknowledges that it is familiar with the provisions of Section 15.103 or City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Vertical Developer will immediately notify the City.

21.13. *Notification of Limitations on Contributions.* Through its execution of this Agreement, Vertical Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Vertical Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Vertical Developer further acknowledges that the prohibition on contributions applies to each Vertical Developer; each member of Vertical Developer's board of directors, and Vertical Developer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Vertical Developer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Vertical Developer. Additionally, Vertical Developer acknowledges that Vertical Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Vertical Developer further agrees to provide to City the names of each person, entity or committee described above.

21.14. *Sunshine Ordinance.* Vertical Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City or Port hereunder public records subject to public disclosure. Vertical Developer hereby acknowledges that the City or Port may disclose any records, information and materials submitted to the City or Port in connection with this Agreement.

21.15. *Tropical Hardwood and Virgin Redwood Ban.* The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

21.16. MacBride Principles - Northern Ireland. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges companies to do business with corporations that abide by the MacBride Principles. Vertical Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

21.17. Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance will be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

21.18. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

21.19. Further Assurances. The parties agree to execute such instruments or to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement; provided, however, that no party will be obligated to provide such instruments and to do such further acts that would materially increase such party's liabilities hereunder or materially decrease such party's rights hereunder. The provisions of this section will survive the Closing.

21.20. . [add if the Vertical Project will include inclusionary BMR units].
Enforceability Waivers. The Horizontal DDA (including the Affordable Housing Plan), together with this Agreement, implements the California Infrastructure Financing District Law, Cal. Government Code §§ 53395 et seq. and City of San Francisco policies and includes regulatory concessions and significant public investment in the Pier 70 Project. The regulatory concessions and public investment include, without limitation, a direct financial contribution of net tax increment, the conveyance of real property without payment, and other forms of public assistance specified in California Government Code section 65915 et seq. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of [Horizontal Developer and] Vertical Developers, as contemplated by California Government Code section 65915. In light of the Port's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the Parties understand and agree that the Costa-Hawkins Act does not and will not apply to the Inclusionary Units developed at the Vertical Project under this Agreement. The Port would not enter into this Agreement without the above provisions. **[Note: TBC]**

21.21. Plans on Record with Port. The most recent versions of the Exhibits, as such Exhibits may be amended or supplemented from time to time in accordance with this Agreement or the terms of such Exhibits, will not be required to be recorded but will be kept on file with the Port. Full color copies of all recorded documents are also on file with the Port. All documents on file with the Port will be made available to members of the public at reasonable times in keeping with the Port's standard practices.

21.22. Survival; Effect of Termination. Any release, partial release, expiration or termination of this Agreement will not affect any provision of this Agreement that, by its express term, is intended to survive the expiration or termination of this Agreement. Upon any termination of this Agreement before issuance of the final Certificate of Completion by reason of a Vertical Developer Default, Vertical Developer will not have the right to proceed with the Vertical Project improvements or Deferred Infrastructure and any additional construction must proceed, if at all, under the terms of a new vertical disposition and development agreement with

the Port or, with the written agreement of the Port, a reinstatement of this Agreement with appropriate agreed upon revisions.

22. PORT AND CITY PROVISIONS.

Vertical Developer will comply with the Port and City provisions set forth in *Exhibit XX* hereto.

23. DEFINITIONS.

For purposes of this Agreement, initially capitalized terms will have the meanings ascribed to them in this Article:

“**28-Acre Site**” is defined in *Recital A*.

“**Acceptance Notice**” is defined in *Section 6.1(a)*.

“**Acquisition Price**” is defined in *Section 2*.

“**Acquisition Event of Default**” is defined in *Section 10.1*.

[for commercial parcels only]: “**Additional Deposit**” is defined in *Section 2.2(a)*.

“**Adequate Security**” is defined in *Exhibit XX*.

“**Administrative Fees**” means a fee imposed by Port or the City in their respective regulatory capacities, that is in effect at the time and payable upon the submission of an application for any permit or approval (including, without limitation, development applications submitted in accordance with the SUD or building permit applications), which is intended to cover only the estimated actual costs to City or the Port of processing that application and inspecting work undertaken pursuant to that application and to reimburse the City or the Port for its administrative costs in processing applications for any permits or approvals required under the Vertical Development Requirements.

“**Agents**” is defined in *Section 21.6*.

“**Agreement**” means

“**Agreement to Comply with CFD and Assessment Matters**” as described in *Section 3.3(b)*.

“**Architect**” means a duly licensed design professional by the State of California designated by Vertical Developer from time to time to issue the Architect’s Certificate.

“**Architect’s Certificate**” means a certificate from the Architect in the form attached hereto as *Exhibit XX*, verifying [Completion] of the Vertical Project (other than the Deferred Infrastructure).

“**As Is With All Faults**” as defined in *Section 4.3*.

“**Assignment and Assumption Agreement**” means an assignment of this Agreement in substantially the form of *Exhibit XX* attached hereto.

“**BAAQMD**” means the Bay Area Air Quality Management District.

“**Board of Supervisors**” means the San Francisco Board of Supervisors.

“**Broker**” is defined in *Section 9.2*.

“**Cal OSHA**” means the California Occupational Safety and Health Administration.

“**Certificate of Completion**” means a certificate executed by Port that Vertical Developer has Completed the construction of the Vertical Project in accordance with all the provisions of this Agreement.

“**CFD Assessments**” is defined in [] .

“**City**” means the City and County of San Francisco, a municipal corporation.

“**City Costs**” means the actual and reasonable costs incurred by City (other than Port) in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in *Section 18.3*, but excluding work and fees covered by Administrative Fees.

“**City Parties**” as described in *Section 4.4*.

“**Claims**” means a demand made in an action or in anticipation of an action for money, mandamus, or any other relief available at law or in equity for a Loss arising directly or indirectly from acts or omissions occurring in relation to the Vertical Project or at the Property during the Term of this Agreement.

“**Close of Escrow**” and “**Closing**” are defined in *Section 2.2(c)*.

“**Closing Costs**” as defined in *Section 9.1*.

“**Closing Date**” means the date when Closing occurs.

“**Commence Construction**”, “**Commencement of Construction**” and any variation thereof means the commencement of substantial physical construction as part of a sustained and continuous construction plan.

“**Commencement of Residential Construction**” means the groundbreaking in connection with the commencement of physical construction of the Vertical Project (excluding the Deferred Infrastructure), or a specified portion thereof, provided that the Commencement of Residential Construction will not be deemed to have occurred until commencement of permanent foundations pursuant to a valid foundation permit (excluding the conducting of test borings or indicator piles or other excavation for pre-development testing). Vertical Developer’s physical work on “site improvements”, as that term is defined in California Civil Code Section 3102, without its commencement of the work described above, does not constitute Commencement of Residential Construction.

“**Complete**” or “**Completed**” means completion by Vertical Developer of all aspects of the Vertical Project in accordance with the approved Construction Documents, or provision of security satisfactory to Port for any Deferred Items, and issuance of applicable temporary certificates of occupancy for the Vertical Project, together with completion of all improvements which are specifically required as a matter of law for occupancy of the entire Vertical Project under the conditions of any Regulatory Approvals.

“**Condominium**” means an estate in real property (i) consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, and/or commercial building on such real property, such as an apartment, office, store, or residential building with ground floor retail, or (ii) as defined in California Civil Code Sections 783, California Civil Code Division 4, Part 5, Chapter 1 or any successor statute or code, intended for residential or commercial/retail use, as shown on a duly filed final subdivision map, parcel map, or condominium plan of the Property or any portion thereof, and any fractional interest thereof, including, without limitation, timeshare interests as defined in California Business and Professional Code Section 11212(x) derived therefrom, lying within the Property.

“**Condominium Unit**” means each individual unit within a Condominium.

“**Construction Documents**” means (i) schematic design documents approved by Planning or Port under the SUD, (ii) site permits and/or building permits issued by the Port for the Vertical Project, and (iii) Improvement Plans for Deferred Infrastructure approved by the Port in accordance with the ICA.

“**Contingency Period**” is defined in *Section 6.1(a)*.

[for residential rental inclusionary projects only] “Costa Hawkins Act” [to be inserted]

“Credit Bid” as defined in *Section 2.2(e)*.

“DDA Release” is defined in *Section 7.4(a)(iii)*.

“Deed” as described in *Section 3.1(a)*.

“Deferred Infrastructure” means those certain Horizontal Improvements identified in *Exhibit XX* that Vertical Developer is required to construct under this Agreement.

“Deferred Items” is defined in *Section 13.1(b)*.

“Deliver” or “Delivery” means **[for fee parcel:** conveyance of the Property by Port to Vertical Developer by quitclaim deed] **[for ground lease parcels:** ground lease of the Property].

“Deposit” is defined in *Section 2.2(a)*.

“Design for Development” means the Pier 70 Design for Development dated [_____, 2017], as amended from time to time.

“Development Agreement” means that certain Development Agreement by and between the Port and Horizontal Developer, dated as of _____, 201XX and recorded in the Official Records as Document No. _____

“Development Documents” means (i) the SUD and the Subdivision Map; (ii) the Design for Development; (iii) approved Construction Documents; and (v) the Development Agreement.

“Development Easements” is defined in *Section 3.4(a)*.

“Effective Date” means the date on which both parties have executed this Agreement as set forth below.

“Engineer” means a duly licensed engineer by the State of California, designated by Vertical Developer from time to time to issue the Engineer’s Certificate.

“Engineer’s Certificate” means a certificate from the Engineer for the Deferred Infrastructure in the form verifying Completion of the Deferred Infrastructure.

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

“Escrow Agent” means the Title Company acting in its capacity as the escrow agent for the transaction.

[for commercial parcels only: “Extended Closing Date” is defined in *Section 7.3(a)*

“Extended Closing Date Conditions” is defined in *Section 7.3(a)*.

“**Extension Notice**” is defined in *Section 7.3(a)*.

“**Final Map**” means [a final subdivision map meeting the requirements of the Subdivision Map Act of California (Calif. Gov’t Code §§ 66410-66499.37) and the San Francisco Subdivision Code and Subdivision Regulations, subject to applicable amendments by or procedures in the DA Ordinance (as defined in the Horizontal DDA) and Development Agreement.]

“**FOG Ordinance**” means Sections 140-140.7 of Article 4.1 of the San Francisco Public Works Code, or any subsequent amendment or replacement of the same that sets forth prohibitions, limitations and requirements for the discharge of fats, oils and grease into the City’s sewer system by food service establishments.

“**Force Majeure**” means events which result in delays in a Party’s performance of its obligations hereunder due to causes beyond such Party’s control and not caused by the acts or omissions of such Party, including, but not restricted to, acts of nature or of the public enemy, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, and unusually severe weather. Force Majeure does not include (i) failure to obtain financing or failure to have adequate funds, (ii) sea level rise, or (iii) any event that does not cause an actual delay. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make additional repairs or obtain additional Regulatory Approvals that would not have otherwise been required but for the Force Majeure Event.

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

“**Horizontal DDA**” means that certain Disposition and Development Agreement between the City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission, and FC Pier 70, LLC, a Delaware limited liability company, dated for reference purposes only as of [_____].

“**Horizontal Developer**” is defined in *Recital A*.

“**Horizontal Documents**” is defined in *Section 3.1(c)*.

“**Horizontal Improvements**” is defined in the Horizontal DDA.

“**ICA**” means the Interagency Cooperation Agreement between various City agencies and departments and the Port, dated as of [_____, 201XX], establishing procedures for City review of the Project.

“**Impact Fees and Exactions**” as defined in the Development Agreement.

“**Inclusionary Units**” has the meaning set forth in the Affordable Housing Plan attached to the Horizontal DDA.

“**Indemnify**” means indemnify, protect, defend and hold harmless. “**Indemnification**” and “**Indemnity**” have correlative meanings.

“**Independent Contract Consideration**” as described in *Section 2.2(d)*.

[for commercial parcels only]: “**Initial Deposit**” is defined in *Section 2.2(a)*.

“**Land Use Plan**” means the map attached to the DDA as [Exh XX], which consists of a map showing Horizontal Developer’s proposed land uses and intensity of vertical development at the 28-Acre Site as of the Effective Date of the DDA.

“**Laws**” means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, ordinances, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term “**Laws**” will refer to any or all Laws as the context may require.

“**License**” is defined *in Section 5.1*.

“**Losses**” means 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 this Agreement.

[for fee parcels only]: “**Managing Party**” is defined in *Section 19.4(a)(i)(10)*.]

“**Master Lease**” is defined in *Recital A*.

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

“**Master Association**” as described in *Section 3.4(b)*.

“**Memorandum of Lease**” is defined in *Section 7.4(a)(ii)*.

“**Memorandum of VDDA**” is defined in *Section 7.4(a)(v)*.

“**Minimum Net Worth Amount**” means Twenty-Seven Million Five Hundred Thousand Dollars (\$27,500,000.00), which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter. **[NOTE: \$27.5 million to increase by 5% every 5 years after Horizontal DDA execution]**

“**Mitigation Monitoring and Reporting Program**” means the Mitigation Monitoring and Reporting Program adopted by the Port for the Pier 70 Project on September 26, 2017, by Resolution No. ____.

“**Mortgagee**” is defined in *Schedule 16*.

[for fee parcels only]: “**Net Worth Guarantor**” is defined in *Section 19.4(a)(i)(10)*.]

[for fee parcels only]: “**Net Worth Guaranty**” is defined in *Section 19.4(a)(i)(10)*.

“**Net Worth Requirement**” means, with respect to a proposed transferee, the proposed transferee has a net worth (inclusive of its equity in the Property) equal to at least the Minimum Net Worth Amount, less any debt to be secured by (i) the proposed transferee’s interest in the Property, or (ii) a pledge of the proposed transferee’s ownership interest.

“**New Hazardous Material**” is defined in *Section 18.1(d) of Schedule 18.1*.

“**Notice of Transfer Fee Covenant**” is that certain notice of the Transfer Fee Covenant in the form attached hereto as *Exhibit XX* and to be recorded in the Official Records.

“**Notice of Special Tax**” is defined in *Section 3.3(a)*.

“**Objectionable Items**” is defined in *Section 6.1(b)*.

“**Objection Notice**” is defined in *Section 6.1(b)*.

“**Official Records**” means the official records of the City and County of San Francisco.

“**Parcel Lease**” as defined in *Section 3.1(a)*.

“**Partial Termination**” is defined in *Section 7.4(a)(v)*.

“**Party**” means Port or Vertical Developer, as a party to this Agreement. “**Parties**” means both Port and Vertical Developer, as parties to this Agreement.

“**Permitted Encumbrances**” as described in *Section 3.1(a)*.

“**Permitted Port Title Exceptions**” as described in *Section 3.1(b)*.

“**Person**” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

“**Phase Submittal**” means a Phase Submittal approved by the Port in accordance with Section [XX] of the Horizontal DDA.

“**Pier 70 Master Association Documents**” means [REDACTED].

“**Pier 70 Project**” means the development of Horizontal Improvements and Vertical Improvements within the 28-Acre Site in accordance with the Horizontal DDA and Development Documents.

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

“**Port**” or “**Port Commission**” means the San Francisco Port Commission.

“**Port Costs**” means the actual and reasonable costs incurred by Port in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in *Section 18.3*, but excluding work and fees covered by Administrative Fees.

“**Port Costs Report**” as defined in *Section 14.2*.

“**Port Default**” as defined in *Section 15.2*.

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

“**Port Title Defect**” is defined in *Section 6.3(a)*.

“**Project Requirements**” is defined in *Section 12.1*.

“**Property**” is defined in *Recital A*.

“**Property Conditions**” is defined in *Section 4.1*.

“**Public Improvement Agreement**” means an agreement entered into between the Port and the Vertical Developer for the completion of the required Deferred Infrastructure if not completed at the time of Final Map approval in accordance with applicable procedures of the

Map Act, Subdivision Code and Subdivision Regulations, or such other agreement entered into between Port and Developer at any time for the completion of Vertical Developer's Deferred Infrastructure obligations hereunder (such as a Street Excavation Improvement Agreement or other Port-issued construction agreement for Public Space Parcels).

“**Public Space Parcels**” means those parcels designated in the Land Use Plan for Public Space and shown as such in the Infrastructure Plan, as amended from time to time.

“**Qualified Transferee**” means any transferee that satisfies each of the following criterion: (1) has, or has engaged a property manager with at least ten (10) years' experience operating [use for commercial leases: major commercial projects] [use for residential parcels: residential projects]; (2) satisfies the Net Worth Requirement; and (3) is subject to jurisdiction of the courts of the State.

“**Regulatory Agency**” means a City Agency or federal, state, or regional body, administrative agency, commission, court, or other governmental or quasi-governmental organization with jurisdiction over any aspect of the Vertical Project or the 28-Acre Site.

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

[for residential condo parcels only: “**Required Construction Commencement Date**” is defined in *Section 15.1(c)*.

“**Restrictive Covenants**” as defined in *Section 3.2* hereof.

[for residential fee parcels only: “**Scope of Development**” is defined in *Section 3.2*.]

“**SFDPH**” means the San Francisco Department of Public Health.

“**SFPW**” means San Francisco Public Works.

“**Special Provisions**” means the City requirements set forth in *Article 20* hereof.

“**State Lands Indemnified Parties**” is defined in *Schedule 18.1*.

“**Subdivision Code**” means the San Francisco Subdivision Code.

“**Subdivision Regulations**” means subdivision regulations adopted by San Francisco Department of Public Works from time to time and any exceptions and design modifications from the standards set forth therein to the extent necessary to achieve consistency with the Infrastructure Plan and all matters previously approved in accordance with Section 4.1(a) of the ICA.

“**SUD**” means Planning Code Section 249.79 (the Pier 70 Special Use District), as amended from time to time.

“**Survey**” means a survey required by the Title Company to issue the title insurance policy described in the Title Commitment.

“**Target Closing Date**” is defined in *Section 7.2*.

“**Taxes and Assessments**” is defined in *Section 6.6*.

“**Tentative Map**” means a tentative subdivision map or tentative parcel map submitted by an applicant and approved by the City in accordance with procedures under the Subdivision Code and Development Documents.

“**Termination Notice**” is defined in *Section 6.1(a)*.

“**Title Commitment**” means a commitment by the Title Company that it will issue to Vertical Developer, an A.L.T.A. extended coverage title insurance policy, with such coinsurance

or reinsurance and direct access agreements as Vertical Developer may request reasonably, in an amount designated by Vertical Developer which is satisfactory to the Title Company, insuring that the leasehold estate in the Property is vested in Vertical Developer subject only to the Permitted Title Exceptions, and with such C.L.T.A. form endorsements as may be requested reasonably by Vertical Developer, all at the sole cost and expense of Vertical Developer.

“**Title Company**” is defined in *Section 2.2(c)*.

“**TMA**” is defined in *Section 3.4(b)*.

“**Transaction Documents**” means the documents executed and delivered by Vertical Developer pursuant to *Section 7.4(b)*.

“**Transfer**” is defined in *Section 19.2*.

“**Transfer Fee Covenant**” is defined in *Section 3.1(d)*.

“**Transferee**” means any Person to which Vertical Developer assigns its rights and obligations under this Agreement in accordance with *Article 19*.

“**Transferor**” means Vertical Developer, in its capacity as a transferor of its rights and obligations under this Agreement in accordance with *Article 19*.

“**Unmatured Vertical Developer Event of Default**” means any default that, with the giving of notice or the passage of time, or both would constitute a Vertical Developer Acquisition Event of Default or Vertical Developer Default under this Agreement.

“**VCA**” means the Vertical Cooperation Agreement to be executed between Vertical Developer and Horizontal Developer, as the same may be amended, supplemented, modified and/or assigned from time to time). [add as applicable: The VCA will include, among other items, a schedule of Horizontal Developer’s Horizontal Improvements obligations, Vertical Developer’s Deferred Infrastructure obligations, and the timing of delivery for each] The VCA may include provisions related to (i) assignment and assumption of liability for Deferred Infrastructure, including bonding and warranty, (ii) sequencing and coordination of infrastructure work as between Master Developer and Vertical Developer, (iii) each party’s obligations related to liability for damage and restoration thereof, (iv) repaving obligations to extent of any underground work performed after Master Developer’s paving, (v) Master Developer reasonable approval over changes to horizontal permit obtained by Vertical Developer, (vi) Master Developer self-help right if Vertical Developer fails to complete Deferred Infrastructure pursuant to an agreed upon schedule of performance, (vii) soil disposal arrangement, and (viii) mechanism for Vertical Developer to submit Deferred Infrastructure costs to Master Developer for reimbursement through Financing Plan (exclusive of fines, penalties, corrective actions).

“**Vertical Developer**” is defined in *Section 21.6*.

“**Vertical Developer’s Conditions**” is defined in *Section [xx]*.

“**Vertical Developer Default**” is defined in *Section 15.1*.

“**Vertical Development Requirements**” means those certain requirements for development of the Property that are contained in: (i) the Development Documents; (ii) [for fee parcels: the Restrictive Covenants][for ground lease parcels: the Parcel Lease]; (ii) approved Construction Documents; and (iii) this Agreement.

“**Vertical Project**” is defined in *Recital H*. “**Work Development Plan**” is defined in *Section 6.4(a)(vi)*.

[SIGNATURES ON FOLLOWING PAGE]

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

VERTICAL DEVELOPER:

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

a _____

By: _____
[NAME]
Executive Director

By: _____
[NAME]

Endorsed by Port Resolution No. ____ and Board
Resolution No. _____

Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

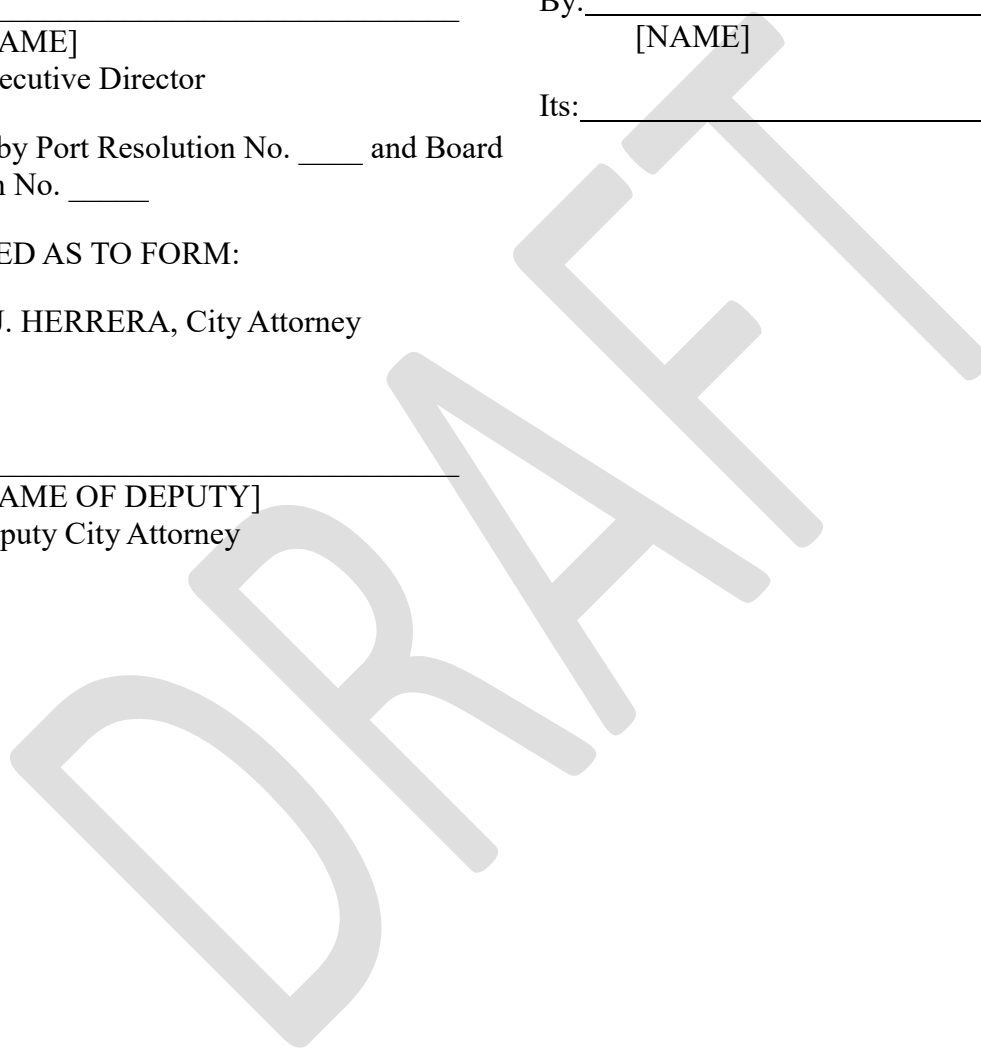


EXHIBIT A

REAL PROPERTY DESCRIPTION

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

[To be attached prior to execution]

EXHIBIT B

VERTICAL PROJECT

[To be attached prior to execution]

EXHIBIT C

*[If ground lease parcel: **FORM OF GROUND LEASE**]*

[To be attached prior to execution]

*[If fee parcel: **FORM OF QUITCLAIM DEED**]*

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

Attn: _____

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105)

(Space above this line reserved for Recorder's use only)

Documentary Transfer Tax of \$_____ based upon full market value of the property without deduction for any lien or encumbrance

**QUITCLAIM DEED [WITH RESTRICTIONS
AND EASEMENT RESERVATIONS]
[(Assessor's Parcel No. _____)]**

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), pursuant to [Ordinance No. _____, adopted by the Board of Supervisors on _____, 20__ and approved by the Mayor on _____, 20__], hereby RELEASES, REMISES AND QUITCLAIMS to _____ ("Vertical Developer"), any and all right, title and interest City may have in and to the real

property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof.

[NOTE: ADD RESERVATIONS AND RESTRICTIONS AS APPLICABLE. IF RESTRICTIONS OR OTHER COVENANTS OR OBLIGATIONS OF GRANTEE, ADD GRANTEE AS SIGNATORY TO DEED.]

Executed as of this _____ day of _____, 20__.

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

By: _____
[NAME]
Executive Director

Endorsed by Port Resolution No. _____

and Board Resolution No. _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

[If required: DESCRIPTION
CHECKED/APPROVED:]

By: _____
[NAME]
City Engineer

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

State of California)
)
County of San Francisco)

SS

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT D

[if ground lease parcel: RESERVED]

[If fee parcel: RESTRICTIVE COVENANTS

EXHIBIT XX

FORM OF NOTICE OF TRANSFER FEE COVENANT

EXHIBIT XX

FORM OF TRANSFER FEE COVENANT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

(SPACE ABOVE LINE FOR RECORDER'S USE)

APN:

[NOTE: Civ. Code 1098.5(b) requires legal description and assessor's parcel number for the affected real property]

PAYMENT OF TRANSFER FEE REQUIRED

DECLARATION IMPOSING TRANSFER FEE COVENANT AND LIEN

THIS DECLARATION IMPOSING TRANSFER FEE COVENANT AND LIEN (this "Covenant") is made as of this ___ day of _____, 20XXX (the "Effective Date"), by and between **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("Port"), and **[BUYER'S ENTITY NAME AND INFORMATION]** ("Declarant"). Port and Declarant are collectively referred to as the "Parties", or each individually, a "Party".

RECITALS

A. Port and Declarant have entered into that certain Vertical Disposition and Development Agreement, dated [_____, 20XXX], ("VDDA") for the property located in the City and County of San Francisco more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). The Property is a portion of the area generally known as Pier 70 (the "Project Site"). It is anticipated that the Property will be developed with residential and commercial condominium units. Declarant will be the initial owner of all the residential and commercial condominium units.

B. Port is a department of the City and County of San Francisco and manages in trust for the people of the State of California, 7½ miles of San Francisco Bay shoreline stretching from Hyde Street Pier in the north to India Basin in the south. Port's responsibilities include promoting maritime commerce, navigation, and fisheries; restoring the environment; and providing public recreation and promoting the statutory trust imposed by the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, and commonly referred to as the "Burton Act" (collectively, the "Public Trust"). The Burton Act provided for the transfer from the State of California, subject to specified terms, conditions and reservations, to the City, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

C. The Property is located in the Southern Waterfront area of the Port of San Francisco's Waterfront Land Use Plan, which area stretches from Pier 70 in the north to India Basin in the south.

D. Pursuant to the VDDA, Declarant has acknowledged and agreed that as material consideration for Port's conveyance of the Property to Declarant, Port would, among other things, receive Transfer Fees in perpetuity from the sale of the Condominiums on the Property after (but not including) the first sale, as further described in this Covenant, to be evidenced by this Covenant recorded on the Property.

E. The Transfer Fees will be used by the Port to promote Public Trust purposes and uses on property within the Port's jurisdiction.

NOW THEREFORE, Declarant hereby declares the existence of a perpetual covenant to pay Transfer Fees, and imposes upon each Condominium developed on the Property a lien to secure payment of Transfer Fees in accordance with the following terms and conditions:

1. DEFINITIONS. As used herein, the following terms have the following meanings:

1.1 **"Condominium"** means an estate in real property (i) consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial, and/or retail building on such real property, such as an apartment, office, or store, or (ii) as defined in California Civil Code Sections 783, California Civil Code Division 4, Part 5, Chapter 1 or any successor statute or code, intended for residential or commercial/retail use, as shown on a duly filed final subdivision map, parcel map, or condominium plan of the Property or any portion thereof, and any fractional interest thereof, including, without limitation, timeshare interests as defined in California Business and Professional Code Section 11212(x) derived therefrom, lying within the Property.

1.2 **"Dispute"** means any disagreement between the Parties, or any Owner and Port, concerning the amount, obligation to pay or other issue concerning the Transfer Fees under this Agreement or concerning any other dispute arising under this Covenant.

1.3 **"Escrow Holder"** means any title company, trust company, or other Person serving as an escrow holder or agent for the Transfer of a Unit.

1.4 **"Foreclosure Trustee"** has the meaning given in Section 7.3 below.

1.5 **"First Mortgage"** means any Mortgage with lien priority over any other Mortgage.

1.6 **"Mortgagee"** has the meaning given in Section 5.1 below.

1.7 **"Notice of Lien"** has the meaning given in Section 7.3 below.

1.8 **"Official Records"** means the official records of the City and County of San Francisco, State of California.

1.9 **"Owner"** means the Person or Persons holding record title to the Unit.

1.10 **"Person"** means a natural individual or any entity with the legal right to hold title in real property.

1.11 **"Property"** means the property described in Exhibit A.

1.12 **"Purchase Price"** means the gross consideration given by the transferee to the transferor in connection with a Transfer (defined below), including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the Transferor that is not paid in consideration for the Transfer but is a pass-through to such third-party (e.g. title

insurance cost), further excluding any Transfer Fee payable hereunder, and without any other deduction or offset of any kind.

1.13 “**Recorded**” means the recordation, filing or entry of a document in the Official Records.

1.14 “**Transfer**” means the sale or exchange of a Condominium (including, without limitation, the sale or exchange of a fractional interest therein or timeshare thereof) or a lease with a term of thirty five (35) years or longer. “Transfer” shall not include:

(a) Any sale, transfer, assignment, or conveyance that is exempt from payment of the real property transfer tax under the San Francisco Business and Tax Regulations Code, Article 12-C, Sections 1105 (but only with respect to the exemption set forth in the first sentence thereof), 1106, 1108, 1108.1, 1108.2, 1108.3, 1108.4, or 1108.5.

(b) The reservation by Declarant of easements, access rights or licenses, water rights or other similar rights benefitting or encumbering any of the Units, or any subsequent transfer of any such easements or rights;

(c) Any transfer of real property to any public agency, entity or district, or any utility service provider; or

(d) Any transfer to an association (defined in Section 4080 of the California Civil Code) of common area (defined in Section 4095 of the California Civil Code);

1.15 “**Transfer Fee**” has the meaning given in *Section 2.1 below*.

1.16 “**Unit**” has the meaning given in *Section 2.1 below*.

2. TRANSFER FEES.

2.1 Transfer Fee Imposed and Amount. Upon each Transfer of a Condominium unit (each, a “Unit”) there shall be due and payable to the Port a fee equal to one and one half percent (1½%) of the Purchase Price of the Unit (the “Transfer Fee”) in perpetuity; provided, however, that no Transfer Fee shall be due and payable with respect to the initial Transfer of any Unit. Examples of the amount of the Transfer Fee that would be payable, as specifically required by Section 1098.5(b)(2)(C) of the California Civil Code, are as follows:

Purchase Price	Transfer Fee	Transfer Fee Due Port
\$250,000	X 0.015	\$3,750
\$500,000	X 0.015	\$7,500
\$750,000	X 0.015	\$11,250

2.2 When Due and Paid. Subject to *Section 2.9 below*, with respect to any voluntary conveyance of a Unit, a Transfer Fee shall be due and payable upon recordation (or other delivery) of the instrument of conveyance that constitutes a Transfer. With respect to any involuntary conveyance that constitutes a Transfer or conveyance by operation of law that constitutes a Transfer, a Transfer Fee shall be due and payable upon demand by Port, or upon recordation of any instrument vesting title in the transferee(s), whichever occurs first, and the transferee(s) shall notify Port of the occurrence of such transfer within a reasonable time after such Transfer occurs, or after obtaining actual knowledge thereof. If a Transfer Fee is not paid when due hereunder, and such failure continues for ten (10) days after notice from Port to the Owner of record, Port may pursue any remedies for failure to pay as set forth in *Sections 7.1, 7.3, 7.4, and 7.5*.

2.3 Port Release. Upon receipt of a timely notice of Transfer in accordance with *Section 2.8 below*, Port shall execute and deliver into each escrow established for delivery of the instrument of conveyance that triggers the Transfer Fee obligation, an instrument duly acknowledged and in recordable form (the “Port Release”), acknowledging the full payment and satisfaction of the Transfer Fee obligation for the applicable Unit Transfer and releasing any claims arising out of the applicable Transfer for failure to pay the Transfer Fee subject to the following conditions:

- (a) Port shall have received the timely notice of Transfer in accordance with *Section 2.8 below*;
- (b) The Transfer Fee amount is verified by Port pursuant to the escrow demand procedures of *Section 2.10 below*; and
- (c) Escrow Holder has agreed that the Port Release will not be released from Escrow and recorded until the Escrow Holder has received confirmation from Port that Port has received the applicable Transfer Fee.

2.4 Payment by Escrow Holder/Delivery of Port Release. The Transfer Fee shall be paid to Port directly out of escrow established for delivery of the instrument of conveyance that triggers the Transfer Fee obligation. The transferor and transferee shall, and hereby do, irrevocably instruct any Escrow Holder holding funds for a Transfer to pay the Transfer Fee to the Port at the address set forth in Section 10 below, or at Port’s election upon prior notice to the Escrow Holder, by wire transfer, from the proceeds of the Transfer at the close of escrow; provided, however, the failure of the Escrow Holder to do so shall not relieve the transferor or transferee of the obligation to pay the Transfer Fee. The transferor and transferee shall execute all documents reasonably requested by the Escrow Holder to confirm this instruction and effectuate such payment on or before the close of escrow. In addition, Declarant and any subsequent Owner shall place in escrow, with any agreement by which it Transfers a Unit, escrow instructions which specifically state, among other things, that the Escrow Holder shall pay the Transfer Fee to the Port out of the proceeds of the sale at the closing. Escrow Holder is hereby instructed by Port to record and deliver to Owner the Port Release upon the sale of the applicable Unit and payment of the applicable Transfer Fee to Port. Port shall execute all documents reasonably requested by the Escrow Holder before close of escrow to confirm this instruction and effectuate such recordation and delivery of the Port Release.

2.5 Transferor and Transferee Jointly and Severally Liable. The obligation to pay the Transfer Fee for each Transfer is a joint and several obligation of the transferor and the transferee in each transaction. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay in any manner they so choose.

2.6 Late Charges and Interest. The Transfer Fee due Port in connection with an applicable Transfer shall be considered late if not paid within ten (10) business days after recordation of the instrument of conveyance for such applicable Transfer. A late fee of one-half of one percent (0.50%) of the Transfer Fee shall apply thereafter for each day such payment is late, up to a maximum of ten percent (10%) of the Transfer Fee. In addition, any Transfer Fee not paid within twenty-five (25) business days following recordation of the instrument of conveyance shall thereafter bear interest at the rate of ten percent (10%) per annum until paid. However, interest shall not be payable on late fees imposed or to the extent such payment would violate any applicable usury or similar law.

2.7 Covenant to Pay and Creation of Lien. Each Owner of an interest in a Unit, by acceptance of a deed or other instrument of conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it is so expressed in any such deed or other instrument of conveyance, hereby covenants and agrees to pay the Transfer Fee to Port in connection with each Transfer by which an Owner acquires or conveys such Unit. The Transfer Fee, together with interest thereon, late charges, attorneys’ fees, court costs, and other costs of

collection thereof, as hereinafter provided, shall be a lien and charge upon the Unit the transfer of which gives rise to the Transfer Fee.

2.8 Mandatory Notice. Every Owner must notify Port within the earlier of: (i) twenty (20) days after execution of a contract to Transfer a Unit, or (ii) five (5) days prior to the effective date of the Transfer. Such notice shall be provided to the Port's address for notice set forth in Article 9 below, and shall be enclosed in an envelope marked prominently: "NOTICE OF UNIT TRANSFER-PIER 70." Such notice shall be substantially in the form attached hereto as Exhibit B and will include: (i) the name and address of the transferor (ii) the name and address of the transferee; (iii) an identification of the Unit being Transferred; (iv) the Purchase Price; (v) the amount of the Transfer Fee that is due and the formula for calculating the same; (vi) the proposed closing or effective date; (vii) the name, address and phone number of the Escrow Holder for the Transfer; (viii) and the name of the escrow officer. If any of the information set forth above is not available when the notice is originally sent to Port, the Owner shall notify Port as soon as such information becomes available. In addition, each Owner shall accurately update Port if any of such information provided shall change on or prior to the closing of effective date of the Transfer.

2.9 Exchange Transfer. If a particular transaction involves more than one Transfer solely because the Unit is held for an interim period by an accommodation party as part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Transfer Fee must be paid in connection therewith, and the accommodation party shall not have any liability for payment of such Transfer Fee.

2.10 Escrow Demand. The Port is hereby authorized as a third party beneficiary of any such escrow to submit a demand into escrow for payment of the Transfer Fee and for any information about the Transfer (such as the date of closing and purchase price) that has not previously been provided to the Port; provided that Port's failure to place such demand shall not affect the obligation of the parties to cause the Transfer Fee to be paid to Port or operate as a waiver of the right of Port to receive the Transfer Fees. The demand shall state (a) either the amount of the Transfer Fee that is due or the formula for calculating the amount of the Transfer Fee that is due, and (b) that the Transfer Fee is due and payable upon recordation (or other delivery) of the instrument of conveyance. The transferor and transferee shall execute any and all escrow documents reasonably requested by Port or Escrow Agent to effectuate the release and payment of Transfer Fee to Port.

BY ACQUIRING TITLE TO A UNIT, EACH OWNER OF A UNIT HEREBY IRREVOCABLY INSTRUCTS ANY ESCROW HOLDER HOLDING FUNDS FOR THE TRANSFER OF THE UNIT TO PAY THE TRANSFER FEE TO THE PORT FROM THE PROCEEDS OF SALE OF THE UNIT, AS SET FORTH HEREIN.

3. BINDING EFFECT. Declarant hereby declares that the Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the rights, reservations, restrictions, covenants, conditions and equitable servitudes contained in this Covenant. The rights, reservations, restrictions, covenants, conditions and equitable servitudes set forth in this Covenant will (1) run with and burden each Unit within the Property in perpetuity and will be binding upon all persons having or acquiring any interest in any Unit or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Property and any interest therein; (3) inure to the benefit of and be binding upon Declarant, Port, each Owner, and their respective successors-in-interest; and (4) may be enforced by Declarant, Port, each Owner, and their respective successors-in-interest. The Parties hereby acknowledge and agree that the obligation to pay a Transfer Fee upon the Transfer of any Unit is not a personal covenant or obligation of Declarant, and that where Declarant is not a transferor, Declarant shall not be obligated to pay any Transfer Fee regarding any Unit.

4. USES OF THE TRANSFER FEES. Port shall deposit the Transfer Fees into the Port's Harbor Fund, to be used solely for Public Trust purposes benefitting lands under Port jurisdiction. Declarant believes that the services, activities, and improvements to be provided by Port under this Section will enhance the value of and will benefit all the land in the specified area, including all Units existing or to be created on the Property. Each Owner who acquires a Unit by such acquisition agrees to and acknowledges the statements made in this Section.

5. MORTGAGES.

5.1 Rights of Mortgagees. Nothing in this Covenant, and no default by an Owner in payment of Transfer Fees, shall defeat or render invalid the rights of the holder of any mortgage or the beneficiary of any deed of trust appearing of record as an encumbrance on any Unit (such holder or beneficiary, collectively "Mortgagee;" and such recorded mortgage or deed of trust, collectively "Mortgage") made in good faith and for value, provided that after the foreclosure or transfer in-lieu of foreclosure of any such Mortgage, such Unit shall remain subject to this Covenant.

5.2 Subordination to First Mortgages. Subject to *Section 5.1*, the rights and obligations of the Parties hereunder concerning any Unit shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Unit; provided, however, that the foregoing subordination shall not apply to Transfer Fees that are not paid when due (i) arising from the Transfer that gave rise to the Recorded First Mortgage, or (ii) described in a Notice of Lien filed at least 21 days prior to the date of recordation of the Recorded First Mortgage.

5.3 Effect of Foreclosure. No foreclosure of a Mortgage on a Unit or a transfer in lieu of foreclosure shall impair or otherwise affect Port's right to pursue payment of any Transfer Fee due in connection with the Transfer of that Unit from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Unit or the purchaser thereof from liability for any Transfer Fees thereafter becoming due or from the lien therefor.

6. ESTOPPEL CERTIFICATE. Within ten (10) days of the receipt of a written request of any Owner of a Unit for which no Transfer Fee is due and owing and as to which Unit Port holds no lien, Port shall deliver to such Owner an executed estoppel certificate certifying that no Transfer Fee is due and owing for such Unit and that Port holds no lien against such Unit.

7. ENFORCEMENT.

7.1 Remedies. Port shall be entitled to any and all rights and remedies available at law or equity in order to collect the Transfer Fees owed it, including but not limited to, specific performance.

7.2 Small Claims Court. Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Any party may submit the Dispute to such court.

7.3 Enforcement by Lien. Without limiting any other right or remedy, there is hereby created a claim of lien, with power of sale, on each and every Unit, or any fractional interest therein that is the subject of a Transfer, to secure prompt and faithful performance of each Owner's obligations under this Covenant for the payment to Port of the Transfer Fees, together with interest thereon, and all late charges, interest, and costs of collection which may be paid or incurred by the Port in connection therewith, including reasonable attorneys' fees. If payment of the Transfer Fee is not made to Port within ten (10) days after notice from Port to the Owner of record, then at any time after the delinquency unless cured, Port may elect to file and record in the Official Records a notice of default and claim of lien against the Unit of the defaulting Owner ("Notice of Lien"). Such Notice of Lien shall be executed and acknowledged by the Port's Executive Director or his or her designee, and shall contain substantially the following information:

- (a) The name of the defaulting Owner,

- (b) A legal description of the Unit;
- (c) The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;
- (d) A statement that the Notice of Lien is made pursuant to this Covenant; and
- (e) A statement that a lien is claimed against the Unit in the amount stated, and that the Port has elected to foreclose the lien against the Unit.

Upon such recordation of a duly executed original or copy of such Notice of Lien and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective.

7.4 Foreclosure of Lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) (the "Foreclosure Trustee") shall be a title company or other neutral third party with prior trustee experience appointed by Port. Port shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Unit acquired at such sale subject to the provisions of this Covenant. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

7.5 Proceeds of Sale. The proceeds of any foreclosure, trustee's or judgment sale provided for in this Covenant shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Transfer Fees hereunder or any liens, shall be paid to each Mortgagee in their respective order of priority to satisfy any outstanding lien, with any remaining balance to be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Unit free from the sums or performance claimed (except as stated in this section) but otherwise subject to the provisions of this Agreement; and no such sale or transfer shall relieve such Unit or the purchaser thereof from liability for any Transfer Fees, other payments or performance thereafter becoming due or from the lien therefore as provided for in this section. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the defaulting Owner.

7.6 Cure of Default. Upon the timely curing of any default for which a Notice of Lien was filed by Port, the Port is hereby authorized to record an appropriate release of such lien in the Official Records.

8. AMENDMENT.

8.1 The Port may record against the Property an assignment and notice in order to assign its rights hereunder to, and to specifically identify, its successor in interest in the event that the lands of the Port are transferred to the State of California or any other agency, in which event this Covenant will be deemed to be so modified.

8.2 This Covenant may be amended by Declarant and the Port to impose an equivalent system of fees in the form of a special tax, assessment or other levy pursuant to an agreement with the City and County of San Francisco; provided, however, that in no event shall any such superseding structure, covenant, lien or other arrangement (a) impose upon Declarant, the Property, or the Units any greater liability or obligation than the liabilities and obligations provided for herein, or (b) impose an obligation for payment of any amounts to an "association," as defined in California Civil Code Section 4080, or a "community service organization or

similar entity” within the meaning of California Civil Code Section 4110, unless the collection of such amounts by such entity would not constitute a violation of Civil Code Sections 4575 and 4580 or other applicable law.

9. SERIAL IMPOSITION AND RECORDATION. No Transfer Fees shall be payable with respect to any transfer of a portion of the Property that has not yet been subdivided to enable the development of the Condominiums on the Property or with respect to the recordation of the subdivision map creating the Condominiums.

10. NOTICES. All notices required or allowed hereunder shall be in writing. Notices to Declarant or notices or payment of the Transfer Fees to Port may be given at the following addresses:

Port:	San Francisco Port Commission Pier 1 San Francisco, California 94111 Attention: Director of Real Estate & Development (Reference: Pier 70) Telephone: (415) 274-0400
With a copy to:	San Francisco Port Commission Pier 1 San Francisco, California 94111 Attention: General Counsel (Reference: Pier 70) Telephone: (415) 274-0400
Declarant:	[Insert contact info]
With a copy to:	

All notices required or allowed to an Owner shall be in writing and shall be sent to the address of the Unit owned by the Owner.

Notices may be given by personal delivery, or sent by reputable overnight delivery service with charges prepaid for next-business-day delivery, or by first class certified U.S. Mail with postage prepaid and return receipt requested. Notices are effective on the earlier of the date received, one business day after transmittal by overnight delivery service, or the third day after the postmark date, as applicable. Each Owner who transfers a Unit shall give notice to the Port of the name and mailing address of the transferee.

11. MISCELLANEOUS.

11.1 Governing Law. The provisions hereof shall be construed and enforced in accordance with the laws of the State of California.

11.2 Attorneys’ Fees. In any action or proceeding to seek a declaration of rights hereunder, to enforce the terms hereof or to recover damages or other relief for alleged breach, then the prevailing party in any such action shall be entitled to recover its reasonable attorneys’ fees and costs, including experts’ fees, costs incurred in connection with (a) post judgment motions, (b) appeals, (c) contempt proceedings, (d) garnishments and levies, (e) debtor and third-party examinations, (f) discovery, and (g) bankruptcy litigation. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys’ fees and costs incurred in enforcing, perfecting and executing such judgment. A party

shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment.

11.3 Time. Time is of the essence of each and every provision hereof.

11.4 Disclaimers. Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

11.5 Construction. Whenever the context of this Covenant requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Descriptive section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

11.6 Waiver. Any waiver with respect to any provision of this Covenant shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this Covenant by a party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Covenant. No waiver will be interpreted as a continuing waiver.

11.7 Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

11.8 Severability. Invalidation of any portion or provision of this Covenant by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect to the maximum extent permitted by law.

11.9 No Dedication. The provisions of this Covenant are for the exclusive benefit of Declarant, Port and their respective successors and assigns, and, except for rights expressly conferred on Port hereunder, shall not be deemed to confer any rights upon any other person. Without limiting the generality of the foregoing, this Covenant is not intended to create any rights in the public.

[Remainder of this Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties have executed this Covenant as of the day and year first above written.

<i>Declarant:</i>	[BUYER'S ENTITY NAME AND STATE OF FORMATION]
<i>Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, acting by the SAN FRANCISCO PORT COMMISSION By: _____ Name: _____ Title: _____
Approved by CITY AND COUNTY OF SAN FRANCISCO , Department of Real Estate _____	

Schedule 15.3

Remedies for Failure to Commence Construction

[For Residential Fee Parcels Only]

1. Liquidated Damages.

a. If the Commencement of Residential Construction has not occurred on or prior to the Required Construction Commencement Date, then Vertical Developer will pay to Port, as liquidated damages, an amount equal to [insert amount that is 2x the daily special tax obligation for the Property] for each day that the Commencement of Residential Construction is delayed beyond the Required Construction Commencement Date (the “**Liquidated Amount**”). Vertical Developer will pay to Port the Liquidated Amount within ten (10) business days of demand therefor; provided, however, Port’s delay in making any such demand will not be deemed to be a waiver of its rights to demand such amounts.

b. The Liquidated Amount will be applied by Port as follows:

- i. First, to pay any taxes and assessments on the Property (including CFD and IFD assessments) to the extent then due and payable;
- ii. Second, all remaining proceeds to Port to be deposited into the Pier 70 Special Facility Revenue Account or, if not required to be so deposited, in the Pier 70 Project Account and thereafter distributed in accordance with Section ___ of the Financing Plan (Exhibit XX to the DDA).

c. THE PARTIES HAVE AGREED THAT PORT’S ACTUAL DAMAGES, IN THE EVENT OF THE FAILURE TO CAUSE THE COMMENCEMENT OF RESIDENTIAL CONSTRUCTION PRIOR TO THE REQUIRED CONSTRUCTION COMMENCEMENT DATE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE LIQUIDATED AMOUNT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: PORT: _____ VERTICAL DEVELOPER: _____

2. Repurchase of Property.

a. Notice. If Commencement of Residential Construction does not occur by the date that is twelve (12) months after the Required Construction Commencement Date (a “**Commencement Default**”), Port will promptly deliver notice of the Commencement Default to Master Developer and Vertical Developer (the “**Commencement Default Notice**”).

b. Master Developer Purchase Option. Following receipt of a Commencement Default Notice, Master Developer will have an exclusive, one-time right to purchase the Property from Vertical Developer for a purchase price equal to eighty-five percent (85%) of the Acquisition Price (the “**Repurchase Price**”) and otherwise on the following terms and conditions (the “**Master Developer Purchase Option**”):

i. Master Developer will have a period of thirty (30) days from receipt of such notice (the “**Master Developer Exercise Period**”) in which to notify Port and Vertical Developer in writing that it desires to exercise the Master Developer Purchase Option (the “**Master Developer Exercise Notice**”).

ii. If Master Developer timely delivers the Master Developer Exercise Notice, then Vertical Developer will cooperate with Master Developer to consummate such

acquisition within ninety (90) days of Vertical Developer's receipt of the Master Developer Exercise Notice ("**Master Developer Closing Period**").

iii. Any rights of Master Developer under this Schedule 15.3 may be exercised by or through its nominee or designee which is an Affiliate of Master Developer.

c. **Port Purchase Option.** If Master Developer fails or declines to exercise the Master Developer Purchase Option within the Master Developer Exercise Period, or if Master Developer exercises the Master Developer Purchase Option and thereafter fails to consummate the same within the Master Developer Closing Period whether through revocation in accordance with [Section 2(e) below] or some other event (collectively, "**MD Period**"), then Port will have an exclusive, one-time right to (1) purchase the Property for the Repurchase Price from Vertical Developer or (2) cause Vertical Developer to sell the Property to a Successful Respondent for not less than the Repurchase Price, and otherwise on the following terms and conditions (the "**Port Repurchase Option**"):

i. Port will have a period of six (6) months from the expiration of the applicable MD Period in which to notify Vertical Developer in writing that it desires to exercise the Port Repurchase Option (the "**Port Exercise Notice**").

ii. If Port timely delivers the Port Exercise Notice, then Port may elect, in its sole discretion, to either:

(1) acquire the Property directly from Vertical Developer, in which case, Vertical Developer will cooperate with Port to consummate such acquisition within ninety (90) days of Vertical Developer's receipt of the Port Exercise Notice; or

(2) issue a request for proposal for the Property or such other solicitation as determined by Port (collectively, "**RFP**"), which RFP will require a minimum bid of no less than the Repurchase Price to qualify as a potential purchaser of the Property. Vertical Developer will cooperate with Port and the successful respondent to the RFP ("**Successful Respondent**") to consummate the acquisition of the Property by the Successful Respondent within ninety (90) days of Port's selection of the Successful Respondent. Vertical Developer will have no rights to any amount or other consideration paid by the Successful Respondent to Port for the Property that exceeds the Repurchase Price.

d. **Vertical Developer Obligations.** In connection with the closing of the Master Developer Purchase Option or the Port Purchase Option (collectively, the "**Repurchase Closing**"), Vertical Developer will deliver into escrow, at least five (5) days prior to the contemplated Repurchase Closing, (i) a quitclaim deed with respect to the Property, subject only to Permitted Exceptions and (ii) a reconveyance of any Mortgage encumbering the Property, together with irrevocable instruction from the applicable Lender(s) to record the same upon payment to such Lender in accordance with Section 3 below.

e. **Revocation.** Notwithstanding anything herein to the contrary, each of Master Developer and Port will have the right, for any reason or no reason, to rescind the Master Developer Exercise Notice or Port Exercise Notice, as applicable, at any time before the consummation of the Closing by delivering written notice to Vertical Developer and the other Party, in which event the party revoking such exercise of its right will have no further right to purchase or repurchase the Property pursuant to this Agreement.

f. **Application of Repurchase Price.** Upon the Repurchase Closing in accordance with this Schedule 15.3 (in any case, a "**Repurchase**"), the Repurchase Price will be applied as follows: (i) first, to pay any taxes and assessments on the Property (including CFD and IFD assessments) to the extent then due and payable; (ii) second, to Port to pay any unpaid amounts required to be paid under this Agreement, including, but not limited to, any unpaid Liquidated Amount; (iii) third, to pay the Closing Costs [of Vertical Developer, Master

Developer, and Port, as applicable,] associated with the Repurchase; (iv) fourth, to any Lender to satisfy the indebtedness evidenced by the Mortgage; and (v) fifth, to Vertical Developer.

3. Rights of Lenders.

Without limiting the rights afforded to Lenders pursuant to Article 16 (Financing; Rights of Lenders) of this Agreement, following a Commencement Default and notice by Port thereof, any Lender will have the right, but not the obligation, to notify Port and Master Developer that it intends to pursue a [Lender Acquisition. Upon receipt of such notice, neither Master Developer nor Port will pursue a its purchase or repurchase right hereunder, as applicable for so long (and only for so long) as Lender is diligently pursuing such Lender Acquisition, and all time periods set forth herein in connection with Master Developer Purchase Option and Port Repurchase Option will be tolled for such period of time.

4. Termination.

The Unless terminated sooner as provided for in this Schedule 15.3, the Master Developer Purchase Option and the Port Repurchase Option will automatically terminate, and will be of no force or effect, upon the earliest of (a) the date upon which a Repurchase is consummated, (b) so long as no Master Developer Exercise Notice or Port Developer Notice has been delivered, the date upon which Commencement of Residential Construction occurs, and (c) the date upon which a Lender Acquisition is consummated.

5. Anti-Flip Protections.

If the Property is acquired by Master Developer, and Master Developer thereafter Transfers the Property to any non-Affiliate prior to the Commencement of Residential Construction, then upon the consummation of such Transfer, Master Developer will pay to Port an amount equal to the net sales proceeds of such Transfer less the Repurchase Price. Port will deposit any such funds into the [Pier 70 Special Facility Revenue Account or, if not required to be so deposited, in the Pier 70 Project Account and thereafter distributed in accordance with [Section 1.6 of the Financing Plan (Exhibit XX to the DDA)]. [Note: Parties discussing whether payment will be through accounting]. For purposes of this Schedule 15.3, “Transfer” includes the sale, transfer, or conveyance of the Property by deed to another party.

6. Third Party Beneficiary.

Master Developer is an intended third-party beneficiary of the terms and provisions of the Agreement set forth in this Schedule 15.3, and Master Developer will have the same rights to enforce this Schedule 15.3 as if Master Developer were a direct party hereto.

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SCHEDULE 18.1 HAZARDOUS MATERIALS INDEMNIFICATION
[FOR FEE PARCELS ONLY]

18.1(b) Hazardous Materials Indemnification.

(i) In addition to its obligations under Section 18.1(a) and subject to Section 18.1(c), Vertical Developer, for itself and on behalf of its tenants, Agents, or any of their respective Agents (individually “**Related Third Party**” and collectively “**Related Third Parties**”) or their respective Invitees, agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

- (1) any Hazardous Material Condition;
- (2) any Handling or Release of Hazardous Materials in, on, under, around or about the Premises;
- (3) **[Add if Vertical Developer responsible for Deferred Infrastructure:** without limiting Vertical Developer’s Indemnification obligations in this Section 18.1(b), any Handling or Release of Hazardous Materials in, on, under, around or about any area outside the Premises boundary used by Vertical Developer or its Agents to perform the Deferred Infrastructure, (“**Deferred Infrastructure Area**”) at any time prior to Acceptance of such Deferred Infrastructure; or
- (4) without limiting Vertical Developer’s Indemnification obligations in Section 18.1(b)(2) or 18.1(b)(3), any Handling or Release of Hazardous Materials outside of the Premises, but in, on, under, around or about the 28-Acre Site, by Tenant or any Related Third Parties; or
- (5) any Exacerbation of any Hazardous Material Condition; or
- (6) failure by Vertical Developer or any of its Related Third Parties to comply with the Pier 70 Risk Management Plan or failure by Vertical Developer’s Invitees or the Invitees of the Related Third Parties to comply with the Pier 70 Risk Management Plan within the Premises; or
- (7) claims by Vertical Developer or any Related Third Party for exposure from and after **[for non-affiliate deals:** the Closing Date] **[for affiliates deals:** the effective date of the Master Lease] to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(ii) Vertical Developer's obligations under Section 18.1(b) includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this section, Vertical Developer must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(iii) Vertical Developer understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this Section 18.1(b) subject to Section 18.1(c), arises upon the earlier to occur of:

(1) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises, **[Add if Vertical Developer responsible for Deferred Infrastructure]**: and the Deferred Infrastructure Area;]

(2) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises **[Add if Vertical Developer responsible for Deferred Infrastructure]**: the Deferred Infrastructure Area;]

(3) the Exacerbation of any Hazardous Material Condition, or

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

18.1(c) Exclusions from Indemnifications, Waivers and Releases.

(i) Nothing in this Article 18.1(b) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the defense obligations set forth in Sections 18.3 extend to Losses:

(1) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties; or

(2) from third parties' claims for exposure to Hazardous Materials prior to **[for non-affiliate deals:** the Closing Date.] **[for affiliate deals:** the effective date of the Master Lease.] or

(3) without limiting Vertical Developer's Indemnification obligations under Sections 18.1(b)(i)(3)], 18.1(b)(i)(4), 18.1(b)(i)(6), or 18.1(b)(i)(7), and to the extent the applicable Loss was not caused by the failure of Vertical Developer or any of its Related Third Parties to comply with the Pier 70 Risk Management Plan or the failure of Vertical Developer's Invitees or the Invitees of the Related Third Parties to comply with the Pier 70 Risk Management Plan within the Property, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Deferred Infrastructure Area after the Acceptance Date for the Deferred Infrastructure Area (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Deferred Infrastructure Area and is not also present in, on or around the Premises); provided, however, the foregoing limitation on Vertical Developer's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Vertical Developer, its tenants, subtenants, Agents, or any of their respective Agents.

(ii) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under this Section 18.1(c) is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Vertical Developer in asserting a claim or claims under such insurance policy but without waiving any of its rights under this Section 18.1(c). Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Vertical Developer, the Indemnification from Vertical Developer under this Section 18.1(c) will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (1) Vertical Developer pays any self-insured retention amount required under the policy, and (2) nothing in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Vertical Developer.

18.1(d) Additional Definitions.

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

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

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

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

“Handle” when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. **“Handling”** has a correlative meaning.

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

the use or any amenity of the Premises or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"Hazardous Material Condition" means the Release or Exacerbation, or threatened Release or Exacerbation of Hazardous Materials in, on, under, or about the Premises or the environment, or from any vehicles Vertical Developer, its tenants, subtenants, or its Agents and Invitees use in, on, under, or about the Premises.

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

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

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

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

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

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

**SCHEDULE 19.4 CALCULATION OF PORT'S SHARE OF
TRANSFER PROCEEDS BEFORE CERTIFICATE OF COMPLETION.**

[Note: Insert from Parcel Lease]