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**COMPROMISE TITLE SETTLEMENT AND
LAND EXCHANGE AGREEMENT FOR
PIER 70**

This COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT FOR PIER 70 (“**Agreement**”) is dated for reference as of _____, 2017. The parties to the Agreement are the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION (“**Commission**”), and the CITY AND COUNTY OF SAN FRANCISCO, acting by and through the SAN FRANCISCO PORT COMMISSION (“**Port**”). The Commission and the Port are each a “**Party**” and are referred to together as the “**Parties.**” This Agreement is entered into pursuant to Chapter 477 of the Statutes of 2011 (“**AB 418**”).

RECITALS

A. This Agreement concerns real property situated in the City and County of San Francisco (“**City**” or “**San Francisco**”) within the area commonly known as Pier 70, which is more particularly described and depicted in **Exhibit A** (“**Pier 70 Area**”), together with certain submerged lands adjacent to the Pier 70 Area (“**Adjacent Submerged Lands**”). The Pier 70 Area includes lands that were historically tide or submerged lands (collectively “**tidelands**”) subject to the common law public trust for commerce, navigation, and fisheries (“**Public Trust**”), as well as historic uplands that were not subject to the Public Trust and historic tidelands in which the Public Trust status is uncertain. The existence of the Public Trust on the Adjacent Submerged Lands is also in dispute. The purpose of this Agreement is to settle certain boundary and title disputes related to the Public Trust within the Pier 70 Area and the Adjacent Submerged Lands, and to establish and reconfigure the location of lands subject to the Public Trust and lands free of the Public Trust within the Pier 70 Area, through the conveyances provided for in this Agreement, subject to the terms and conditions of this Agreement.

B. The Pier 70 Area consists of the “**Public Trust Lands**,” more particularly described in **Exhibit B**, and the “**Trust Termination Lands**,” more particularly described in **Exhibit C**. The Adjacent Submerged Lands are more particularly described in **Exhibit D**. The Parties desire through this Agreement to establish or confirm the Public Trust on the Public Trust Lands and the Adjacent Submerged Lands, and to terminate the Public Trust in the Trust Termination Lands, through a land exchange to be accomplished through certain conveyances as provided in this Agreement (“**Exchange**”).

C. The extent to which the Pier 70 Area and the Adjacent Submerged Lands may be subject to the Public Trust is uncertain and subject to dispute, the resolution of which would require extensive land title and boundary litigation at great public expense. The circumstances giving rise to the Public Trust title uncertainties include the following:

1. Upon its admission to the Union on September 9, 1850, the State of California (“**State**”), by virtue of its sovereignty, received all right, title, and interest in tidelands within its boundaries, subject to the Public Trust. The Pier 70 Area includes lands that were tidelands at statehood, subject to the Public Trust. The Pier 70 Area also includes uplands that were above the ordinary high water line at statehood, and were therefore not subject to the Public Trust. The last natural location of the ordinary high water line cannot be determined with certainty.

2. Beginning in 1868, the State conveyed certain Pier 70 Area tidelands into private ownership pursuant to various state statutes, including Chapter 616 of the Statutes of 1866 (“**Alvord Grant**”), Chapter 362 of the Statutes of 1868 (“**Pacific Rolling Mill Grant**”), and Chapter 543 of the Statutes of 1868 (“**BTLC Act**”). Portions of those tidelands were subsequently filled and reclaimed. The Public Trust was terminated in the lands conveyed and filled pursuant to the BTLC Act in the manner recognized in *City of Berkeley v. Superior Court* (1980) 26 Cal.3d 516. The continued existence of the Public Trust on the lands conveyed pursuant to the Alvord Grant and Pacific Rolling Mill Grant is uncertain.

3. Certain areas within the Pier 70 Area were originally set aside by the State for street purposes (“**paper streets**”). The State withheld some of these paper streets from sale, which remain subject to the Public Trust. Other paper streets may have been conveyed into private ownership free of the Public Trust. Title to certain paper streets was quieted in a private owner in *California v. Bethlehem Steel et al.* (San Francisco Superior Court, Case No. 401394), without any Public Trust reservation or express termination. The State takes the position that the effect of this holding on the Public Trust is uncertain. In *California v. United States* (1955) 132 F.Supp. 208, the State’s interest in certain other paper streets was found to have been taken by the United States during its occupation of the lands during World War II, but the effect of that decision on the Public Trust is uncertain.

4. The effect of the Alvord and Pacific Rolling Mill Grants, the BTLC Act, and the rulings in *California v Bethlehem Steel* and *California v. United States* on the continued existence of the Public Trust in the Adjacent Submerged Lands is also uncertain.

5. In 1969, the State granted its sovereign and other property interests within San Francisco to the Port in trust, pursuant to Chapter 1333 of the Statutes of 1968 (“**Burton Act**”) and the Agreement Relating to Transfer of the Port of San Francisco from the State of

California to the City and County of San Francisco (“**Burton Act Transfer Agreement**”). Within and adjacent to the Pier 70 Area, the granted lands included certain lands that the State had previously purchased in its proprietary capacity from the United States, including certain historic uplands not subject to the Public Trust and certain former tidelands that had or may have been freed of the Public Trust. All of the lands the State granted to the Port are presently subject to the statutory trust imposed by the Burton Act and any additional restrictions on use and alienability created by the Burton Act Transfer Agreement (“**Burton Act Trust**”).

6. In 1982, the Port acquired the remainder of the Pier 70 Area and the Adjacent Submerged Lands from Bethlehem Steel Corporation for \$1. These after-acquired lands are not subject to the alienation restrictions of the Burton Act Trust and consist of lands that are not or may not be subject to the Public Trust, but are held by the Port as assets of the Public Trust.

D. As a result of the foregoing boundary and title uncertainties and historical circumstances, most of the Pier 70 Area, including almost the entire Pier 70 waterfront, either is free of the Public Trust or its Public Trust status is uncertain. The Public Trust status of the Adjacent Submerged Lands is also in dispute.

E. The Pier 70 Area is vastly underutilized. With the exception of the portion of the Pier 70 Area that has been leased for drydock operations (which the Port intends to re-lease to a new operator for ship repair and related uses), the Pier 70 Area has been mostly vacant or used for interim nontrust uses since the Port acquired the lands. Most of the site is listed in the National Register of Historic Places as the Union Iron Works Historic District, which contains 44 contributing resources to one of the most important intact maritime industrial complexes west of the Mississippi River. A Port tenant is rehabilitating eight contributing historic buildings for future reuse (“**Historic Pier 70 project**”), but the remaining contributing historic resources on the site are vacant and in disrepair. Most of the land outside the drydock area is occupied by asphalt parking lots. None of the Pier 70 Area waterfront is publicly accessible today.

F. The Port is in the early stages of developing a public park along the northwestern portion of the Pier 70 waterfront (“**Crane Cove Park**”). The Port is also negotiating with a potential tenant for the master planned development of approximately 28 acres of the Pier 70 Area that, if approved, would provide a vibrant new mixed use community, including new parks and public access along the eastern portion of the Pier 70 Area waterfront (“**Pier 70 Waterfront project**”). The Pier 70 Area also includes a vacant parcel abutting Illinois Avenue that is cut off from the water (“**Parcel K**”), which the Port believes is no longer useful for Public Trust purposes.

G. The Trust Termination Lands within the Pier 70 Area consist of historic uplands and filled tidelands that have been cut off from access to the San Francisco Bay and are no longer useful for purposes of the Public Trust or the Burton Act Trust (collectively, “**Trust**”). The lands outside of the drydock area and the Historic Pier 70 project are blighted. The Historic Pier 70 project is restoring certain historic buildings with a use program that includes some nontrust uses in accordance with AB 418. However, the Pier 70 Area, including the Historic Pier 70 Project, is not capable of generating sufficient revenues from Trust uses or interim nontrust uses to provide the remaining infrastructure improvements, public facilities, and

remediation that would be needed to eliminate the blighted condition of the site or advance the purposes of the Trust.

H. Removal of the use and alienability restrictions of the Trust from the Trust Termination Lands and resolution of the title uncertainties related to the Public Trust would enable the beneficial development of the Pier 70 Area and generation of substantial revenue for the Port through the proposed Pier 70 Waterfront project.

I. To facilitate the productive reuse of lands within the Pier 70 Area, AB 418 authorizes the Commission to carry out an exchange of lands that will place or confirm the Trust on lands within the Pier 70 Area with substantial value for the Trust, and will terminate any Trust interest in Pier 70 Area lands that no longer are useful for Trust purposes.

J. In AB 418, the Legislature found that absent a trust exchange, substantial portions of the lands within the Pier 70 Area that are located along the waterfront or are otherwise of high value to the Trust could be sold into private ownership, cut off from public access, and used for purposes inconsistent with the Trust, and that certain interior lands not useful for trust purposes would be restricted by the Trust and could not be used for nontrust uses essential to the revitalization of the Pier 70 Area.

K. The exchange authorized by this Agreement will result in the configuration of Trust lands that maximizes the overall benefits to the Trust, without interfering with Trust uses or purposes. The exchange will place in the Trust the entire waterfront of the Pier 70 Area, as well as certain interior lands that have high Trust values as a visitor-serving park and open space, or for ship repair activities. The Public Trust Lands reflect a configuration of lands that is most advantageous to the Trust in light of all relevant considerations, including but not limited to the considerations set forth in Recitals ___ above. The exchange also calls for the Trust to be confirmed on the Adjacent Submerged Lands.

L. The Trust Termination Lands are either historic uplands or filled tidelands, have been cut off from navigable waters, and are no longer needed or required for the promotion of the Trust. The present Pier 70 area waterfront resulted from a highly beneficial program of harbor development. The Trust Termination Lands total approximately _____ acres, of which most already are or may be free of the Public Trust. This area constitutes a relatively small portion of the tidelands within the City that the State has granted to the City or other trustees within the City and County boundaries, which include over 1,000 acres of filled lands.

M. In interest of settlement, the Parties have conducted independent studies and evaluations of the title evidence, the principles of law, and the merits of their legal positions. The Commission has reviewed an appraisal and other information prepared to analyze monetary values of the Trust Termination Lands and the Public Trust Lands and has reached an independent conclusion regarding the economic values of these properties. Both Parties have concluded that the monetary value of land or interests in land to be received as Public Trust Lands is equal to or greater than the monetary value of the Trust interests to be terminated in the Trust Termination Lands.

N. The proposed street layout for the Pier 70 Area will provide pedestrian and vehicular access to the Public Trust Lands within the Pier 70 Area primarily by the existing

Trust segment of Illinois Street adjacent to Crane Cove Park, 20th Street (access to the Historic Pier 70 project, access to the Pier 70 Waterfront project leasehold, including the Waterfront Terrace park, and the drydock area), 22nd Street (access to the Pier 70 Waterfront project leasehold, including Slipways Commons and Waterfront Promenade parks), and an eastward extension of 19th Street and Georgia Street to provide access to Crane Cove Park and the drydock operations. Maryland Street will connect the drydock area and Historic Pier 70 project site with the Pier 70 Waterfront Site project. Maryland Street will also provide access to the ground level visitor-serving retail located along Slipway Commons. The portions of these streets within the Pier 70 Area are or will be impressed with the Trust as part of the exchange and will primarily serve the Trust purposes of access to shoreline improvements and shoreline circulation.

O. The Port prepared an Environmental Site Investigation to assess the environmental condition of the Pier 70 Area and a Feasibility Study/Remedial Action Plan (“**RAP**”) to identify an appropriate remedial alternative, which the San Francisco Regional Water Quality Control Board (“**Regional Board**”) approved in 2012. In accordance with the RAP, the Port prepared a Risk Management Plan (“**RMP**”), which the Regional Board approved, and recorded a Covenant and Environmental Restriction on Property, requiring compliance with the RMP, as Document No. 2016-K308328-00 (“**CERP**”). The RMP requires capping existing native soil with durable covers, long-term maintenance of those covers, and institutional controls to minimize potential health and environmental impacts. The RMP will be implemented through maintenance of existing building foundations and paved surfaces or, where new development is planned, the construction of new foundations, paved surfaces, and landscaping meeting the requirements for durable covers as set forth in the RMP. The Port, through binding agreements, has required or will require its lessees and successors to construct and maintain the required improvements as part of the Pier 70 Waterfront project, the Historic Pier 70 Project, any future drydock lease, and any other development projects within the Pier 70 Area, and the Port will implement the requirements in the development and operations of Crane Cove Park.

P. AB 418 provides that the Commission may require, as a condition of the exchange, that the Port agree to impress with the Trust the Adjacent Submerged Lands following completion of remediation of those lands or at a time the Commission determines is in the best interest of the State. This Agreement provides that all or part of the Adjacent Submerged Lands shall be added to the Trust as part of the exchange, or in one or more subsequent closings, upon request of the Executive Officer of the Commission (“**Executive Officer**”) following a finding by the Commission that any portion of the Adjacent Submerged Lands is in a condition suitable to be impressed with the Trust.

Q. The exchange described in this Agreement is needed to confirm the State’s sovereign interest in certain lands within the Pier 70 Area; to resolve the Trust status of certain disputed lands within the Pier 70 Area; to confirm or impress the Trust on the lands of greatest value to the Trust in the Pier 70 Area; to render development of the Pier 70 Area economically feasible by removing the Trust Termination Lands from the Public Trust and amending the Burton Act Transfer Agreement, permitting the Port to realize the economic benefit therefrom; and to allow the Public Trust Lands to be used to the greatest benefit of the people of this State.

R. As set forth in Sections 1 and 2, the land title transfers provided for in this Agreement will be accomplished through the following recorded conveyances, subject to the conditions of closing and other terms and conditions of this Agreement:

(i) The Port will convey by quitclaim deed its interests in the Public Trust Lands and Trust Termination Lands to the Commission;

(ii) After accepting the Public Trust Lands from the Port, the Commission will convey by patent the Public Trust Lands to the Port as sovereign lands subject to the Trust; and

(iii) After accepting the Trust Termination Lands from the Port, the Commission will convey by patent the Trust Termination Lands to the Port free of the Public Trust.

S. Under Public Resources Code 6102, the Commission is the successor to, and is vested with all the powers, duties, purposes, responsibilities and jurisdiction formerly vested in the Department of Finance as successor to the Surveyor General, Register of the State Land Office, and the State Land Office.

T. The Port approved this Agreement through Port Resolution _____, adopted by the Port on _____. The City's Board of Supervisors approved this Agreement through Resolution _____, adopted by the Board of Supervisors on _____. The Commission approved this Agreement at its meeting of _____.

AGREEMENT

In consideration of the foregoing recitals and the following conveyances and terms, the Parties hereby agree as follows:

1. The Establishment of the Trust in the Public Trust Lands. The Trust shall be established in the Public Trust Lands through the following conveyances and acceptances in accordance with and subject to the conditions of closing described in Section 14 and the other terms and conditions of this Agreement:

a. The Port shall convey, remise, release, and forever quitclaim to the Commission all of the Port's right, title, and interest in the Public Trust Lands by Quitclaim Deed in the form of **Exhibit E**.

b. Upon accepting the Public Trust Lands, the Commission shall convey, remise, release, and forever quitclaim, in trust, to the Port all of the State's right, title, and interest (including all right, title, and interest conveyed to the Commission by the Port) in the Public Trust Lands by Patent in the form of **Exhibit F**. The Port shall hold the Public Trust Lands as sovereign lands subject to the Trust.

2. The Termination of the Public Trust in the Trust Termination Lands. The Public Trust shall be terminated in the Trust Termination Lands through the following conveyances and acceptances, in accordance with and subject to the conditions of closing described in Section ___ and the other terms and conditions of this Agreement:

a. The Port shall convey, remise, release, and forever quitclaim to the Commission all of the Port's right, title, and interest in the Trust Termination Lands by Quitclaim Deed in the form of **Exhibit E**.

b. Upon accepting the Trust Termination Lands, the Commission shall convey, remise, release, and forever quitclaim to the Port all of the State's right, title, and interest (including all right, title, and interest conveyed to the Commission from Port) in the Trust Termination Lands by Patent in the form of **Exhibit G**. The Patent shall specifically release and terminate any Public Trust interest in the Trust Termination Lands.

3. **Amendment to the Burton Act Transfer Agreement**. At the Close of escrow, in accordance with Article XII of the Burton Act Transfer Agreement and AB 418, the Burton Act Transfer Agreement is hereby amended to add the following sentence to the first paragraph of Article VI:

Notwithstanding the foregoing, any property transferred to the City under the Act or acquired with funds derived from the transferred property, upon conveyance of the property to the City free of the public trust as part of a public trust exchange pursuant to Chapter 477 of the Statutes of 2011 (as amended from time to time, "AB 418"), shall be held by the City as an asset of the public trust, free of any use or alienation restrictions of the public trust or the Act, but subject to the requirements of AB 418, for so long as the City holds title to the property.

The City and County of San Francisco, acting by and through its Board of Supervisors, and the Executive Officer of the Commission, acting for and on behalf of the Commission, have executed this Agreement for the purpose of effectuating this amendment to the Burton Act Transfer Agreement.

4. **Procedures for Adjusting Exchange Boundaries**. The Port and the Commission anticipate that a number of development approvals within the Pier 70 Area, including the approval of final construction plans and specifications for infrastructure and final subdivision maps, will be obtained after the effective date of this Agreement, and potentially after the exchange conveyances have closed. The engineering and design information developed in connection with those approvals will assist in determining the precise locations of land parcel boundaries and of project infrastructure, including streets to be held subject to the Trust. Accordingly, minor adjustments to the boundaries between the Public Trust Lands and the Trust Termination Lands, as those boundaries are described in the exhibits to this Agreement, or as they may be described in deeds implementing this Agreement, may become necessary or desirable as more detailed site information is developed. Such a change (a "**Parcel Boundary Adjustment**") shall proceed in accordance with the following procedures:

a. The Port may request from the Executive Officer approval of a Parcel Boundary Adjustment. The Port shall provide the Executive Officer with any maps, legal descriptions, surveys, or other information necessary to review the proposed Parcel Boundary Adjustment. The Executive Officer shall approve the Parcel Boundary Adjustment if he or she finds in his or her sole discretion that the Parcel Boundary Adjustment would not constitute a material change in parcel boundaries. A material change shall include a significant change in the overall configuration of the Public Trust and Trust Termination Lands depicted on Exhibit H

(“Trust Configuration”). If the Executive Officer determines that the proposed Parcel Boundary Adjustment would constitute a material change in parcel boundaries, he or she shall refer the Parcel Boundary Adjustment to the Commission, whose consideration of the referral shall proceed pursuant to Section 3(b).

b. The Commission may approve a Parcel Boundary Adjustment if it determines that the Parcel Boundary Adjustment, based on final legal descriptions, (1) would not constitute a significant change in the Trust Configuration, or (2) would constitute a significant change, but the Commission makes the findings set out in Section 7 below as to the revised Trust Configuration. The Commission shall not unreasonably delay or withhold its approval, subject to the required findings.

c. Following Executive Officer or Commission approval, Port and Commission staff shall cooperate in the actions necessary to effectuate the Parcel Boundary Adjustment, including, as necessary, the preparation of legal descriptions, deeds, and revised exhibits to this Agreement, at the Port’s sole cost and expense. The Parties shall prepare, execute, and record a Memorandum of Parcel Boundary Adjustment including all revised exhibits, which shall upon recordation be deemed to replace the corresponding exhibits to this Agreement. If an approved Parcel Boundary Adjustment affects lands previously conveyed pursuant to this Agreement, the Port and the Commission shall cooperate in undertaking any conveyances, lot line adjustments or other actions necessary to effectuate the Parcel Boundary Adjustment as to such lands.

5. State Minerals Reservation. The Commission excepts from the conveyances made pursuant to Section 1 of this Agreement and reserves unto the State, its successors and assigns, forever, any and all minerals and any and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered in the Public Trust Lands and Adjacent Submerged Lands hereafter conveyed to the Port pursuant to this Agreement. Such mineral rights shall include, but are not limited to, oil and gas rights, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State or to its successors and assigns, except that, this reservation shall not include the right of the State or its successors or assigns in connection with any mineral reservation, removal, or disposal activity, to do either of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by the grantee or by the grantee’s successor, assigns or lessees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred (500) feet below the surface of the lands without written permission of the Port or its successors or assigns.

6. Street Layout. The Port shall not approve a plan or permit for the construction of public streets within the Public Trust Lands (“**Trust Streets**”) unless the Trust Streets materially conform to the configuration depicted in Exhibit I, or the Commission has approved a modification of the layout of Trust Streets and made the findings required by Section 3(b)(7) and Section 3(b)(8) of AB 418. In the event that the Commission approves such a modification, the Parties shall prepare, execute, and record a Memorandum of Modification, including a revised Exhibit I, which shall upon recordation be deemed to replace the corresponding exhibit to this Agreement.

7. Adjacent Submerged Lands. The Port shall reasonably cooperate with the Commission to take all necessary actions to impress or confirm the Trust on any portion of the Adjacent Submerged Lands upon receipt of the Executive Officer's written request following a finding by the Commission that the applicable portion of the Adjacent Submerged Lands is suitable to be impressed with the Trust. The Trust shall be impressed or confirmed on the applicable portion of the Adjacent Submerged Lands in one or more closings in which the Port shall quitclaim the lands to the Commission, subject to the Executive Officer's acceptance of the physical condition and condition of title of the lands to be conveyed, and the Commission shall convey the lands back to the Port by patent, subject to the Trust, in generally the same manner prescribed by this Agreement for the conveyance of the Public Trust Lands.

8. Commission Findings. The Commission, effective upon recordation of this Agreement, makes the following findings as required by AB 418 and to comply with Article X, section 3 of the California Constitution:

a. The Trust Termination Lands have been filled and reclaimed, are cut off from access to the waters of the San Francisco Bay, and are no longer in fact tidelands or navigable waterways, were part of a highly beneficial program of harbor development, are relatively useless for public trust purposes, and constitute a relatively small portion of the granted lands within the City.

b. The lands or interests in lands to be impressed with the Trust have a monetary value equal to or greater than the monetary value of the lands or interests in lands to be exchanged out of the Trust.

c. No substantial interference with Trust uses and purposes, including public rights of navigation and fishing, will ensue by virtue of the exchange.

d. The Public Trust Lands to be impressed with the Trust will provide a significant benefit to the Trust and are useful for the particular Trust purposes authorized by AB 418.

e. The configuration of Public Trust Lands within the Pier 70 Area, upon completion of the exchange, will consist solely of lands suitable to be impressed with the Trust.

f. The appropriate state agencies have approved an environmental site investigation and risk assessment of the Pier 70 Area and agree on subsequent actions and development standards needed to ensure appropriate management of potential risks as established by the RAP, the RMP, and the CERP; the Port has provided adequate financial assurances to ensure performance of any affirmative remedial actions required by the RAP, the RMP, and the CERP; and sufficient liability measures that protect the State will be in place upon completion of the exchange.

g. The final layout of streets in the Pier 70 Area shall provide access to the Public Trust Lands and be consistent with the beneficial use of those lands.

h. Streets and other transportation facilities located on the Public Trust Lands will be designed to be compatible with the Trust and to serve primarily Trust purposes of access to shoreline improvements and shoreline circulation rather than serving nontrust purposes.

i. The Port and the City's Board of Supervisors have approved this Agreement after at least one public hearing and have found, based on supporting documentation, that the lands or interests in lands impressed with the Trust will provide a significant benefit to the Trust and are useful for the Trust purposes authorized by AB 418.

j. The surveys and legal descriptions required for the lands to be conveyed in the exchange will be approved by the Commission or by the Executive Officer prior to the closing.

k. The exchange complies with all of the requirements of AB 418.

l. The exchange is consistent with and furthers the purposes of the Public Trust, the Burton Act Trust, and AB 418.

m. The exchange is in the best interest of the statewide public.

9. Additional Findings. The Commission, effective upon execution and recordation of this Agreement, makes the following additional findings:

a. There is a good faith and bona fide dispute as to the State's interests within the Pier 70 Area. This Agreement is a compromise of the contested issues of law and evidence upon which the dispute is based, and is in lieu of the significant costs, delay, and uncertainties of title and boundary litigation, and is consistent with and authorized by the requirements of law.

b. There are title and boundary disputes over the Pier 70 Area. This Agreement is in settlement of a title and boundary problem and is therefore exempt from the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code section 21080.11, the California Coastal Act pursuant to Public Resources Code section 30416(c), and the Subdivision Map Act pursuant to Government Code section 66412(e). The City and County of San Francisco has also completed a Final Environmental Impact Report for the Pier 70 Mixed-Use District Project, which was certified by the San Francisco Planning Department through Resolution _____ on _____.

10. Indemnification and Defense of Claims.

a. The Port shall indemnify, defend and hold harmless the State, its officers, agencies, commissions, and employees from and against any and all claims, liability, losses, attorneys' fees, costs and expenses (collectively "**Claims**"), including third party Claims and Claims by any governmental agency, relating to any hazardous materials that, as of the date of close of escrow pursuant to this Agreement, are located at, on, over, under, or flowing through any portion of the Public Trust Lands, Trust Termination Lands, or the Adjacent Submerged Lands that are conveyed at the closing (collectively "**Covered Trust Lands**"), provided, however, the obligation to indemnify under this Section shall not apply to the extent that (a) the

hazardous materials were present on the Covered Trust Lands during any period (prior to the closing) in which the State owned the fee in the Covered Trust Lands, or (b) the State or its agents released, generated, treated, stored, used, disposed of, deposited, abandoned or exacerbated the hazardous materials affecting the Covered Trust Lands. The Port and the Commission agree that if the State is a named insured in a pollution liability insurance policy obtained by the Port, the obligation to indemnify the State under this Section shall not become effective unless and until any proceeds from the policy are exhausted.

b. The Parties agree to use reasonable efforts to defend this Agreement, any deed, patent, agreement, or other instrument executed pursuant thereto, and any decision made by a Party to approve the foregoing, including the approval of any required findings related thereto, in any legal action challenging the validity or legality thereof. In any such action, the Port shall reimburse the Commission for all reasonable costs incurred in connection with such action, including but not limited to reasonable staff time and attorney's fees incurred by the Commission, and including but not limited to any award of attorney fees made by a court of competent jurisdiction against the Commission, on such reasonable terms and conditions as the Parties may establish by separate agreement; provided, however, that the Port's obligation to reimburse the Commission shall apply only to the extent that the Commission agrees to allow the Port to lead the defense (including a defense to an action in which the Port is not a party), reasonably cooperates therein, and does not take a position materially adverse to the Port; and provided further that the fee or expense (including any liability for an attorney's fees award) was incurred in connection with a claim that is part of the defense of the Commission and the Port. Nothing in this section limits the discretion of the Commission, at its sole cost and expense, to conduct its own defense, take the lead in its own defense, or take a position materially adverse to the Port.

11. Initiation of Closing. The Port shall initiate the closing for the exchange by establishing an escrow in San Francisco with a title company ("**escrow agent**" or "**title company**," as appropriate) agreed upon by the Parties and providing written notice to the Executive Officer. The notice shall include legal descriptions for the lands to be conveyed in the closing, a list of all documents required to close escrow with required signatories indicated, and drafts of all deeds, instruments, certificates of acceptance, title commitments, and other documents that are required for the closing and are within the Port's responsibility and control. The Parties shall use commercially reasonable efforts to close within 60 days after the Executive Officer's receipt of the notice, unless the closing requires Commission approval, in which case the Parties shall use commercially reasonable efforts to close within 120 days after the Executive Officer's receipt of the notice.

12. Legal Descriptions. It is a condition precedent to a Party's obligation to close escrow for the conveyance or acceptance of real property that the Party has approved the legal description for the real property, which approval shall not be unreasonably withheld. For the Commission, the Executive Officer may grant such approval; for the Port, the Executive Director may grant such approval.

13. Deposits into Escrow.

a. At or prior to closing, the Commission shall deposit the following documents into escrow:

i. A certified copy of the Minute Item for Calendar Item No. _____, the Commission public hearing on _____, showing the Commission’s approval of this Agreement;

ii. The Executive Officer’s written approval of (A) the condition of title to the Public Trust Lands as shown in pro forma title commitments in coverage amounts acceptable to the Executive Officer, (B) the form of title insurance to be issued, and (C) the physical condition of the Public Trust Lands;

iii. A signed and attested patent in the form of **Exhibit G**, transferring to the Port the Trust Termination Lands free of the Public Trust; and

iv. A signed and attested patent in the form of **Exhibit F**, transferring to the Port the Public Trust Lands.

b. At or prior to closing, the Port shall deposit the following documents into escrow:

i. A certified copy of Port Resolution _____ adopted on _____, and the Board of Supervisors Resolution _____ adopted on _____, approving this Agreement and authorizing the Port Director to execute it on behalf of the Port;

ii. A signed and acknowledged quitclaim deed from the Port in the form of **Exhibit E**, transferring to the Commission all of the Port’s right, title and interest in the Trust Termination Lands and the Public Trust Lands;

c. All patents and quitclaim deeds deposited into escrow shall include a certificate of approval duly executed by the grantee (which certificate may be deposited into escrow separately by the grantee), the appropriate attestations or acknowledgments, and any ancillary documents required by state law or the City’s Assessor-Recorder, such as an executed Transfer Tax Affidavit and an executed Preliminary Change of Ownership Record.

d. The Parties shall submit to the escrow agent joint escrow instructions substantially conforming to the foregoing, together with any supplemental instructions necessary to effectuate the intent of this Agreement to which the Parties agree in writing.

14. Commission’s Conditions Precedent.

a. Adjacent Submerged Lands. As a condition precedent to the Commission’s obligation to close escrow on any portion of the Adjacent Submerged Lands, the Executive Officer shall have made a finding that the Adjacent Submerged Lands to be conveyed in the closing are suitable to be impressed with the Trust.

b. Title Condition; Physical Condition. As a condition precedent to the Commission’s obligation to close escrow, the Executive Officer shall have approved the condition of title and the form of a CLTA title insurance policy to be issued by the title company, in the amount of coverage reasonably requested, for any Public Trust Parcel or Adjacent Submerged Lands to be conveyed in the closing (“**Trust Property**”), and shall have approved

the physical condition of the Trust Property, which approvals shall not be unreasonably withheld. Notwithstanding the foregoing, existing public rights-of-way, easements for the construction, operation, maintenance, and repair of underground utilities, and the CERP shall be deemed acceptable conditions of title.

15. Records of Survey. Immediately following the recordation of the patents and quitclaim deeds described in Section 13 above, the Port shall cause to be recorded in the Office of the City's Assessor-Recorder a record of survey, reviewed and approved by the Executive Officer and the City and County Surveyor, and based on field surveys, showing the boundaries of the Public Trust Lands, the Trust Termination Lands, and any Adjacent Submerged Lands conveyed in the closing. Such record of survey shall establish the physical boundaries and shall define same with sufficient controlling monuments appropriately placed.

16. Close of Escrow and Recordation. The joint escrow instructions for each closing shall direct the escrow agent to notify the Parties, upon the agent's receipt of all documents listed and described in the escrow instructions, of its intention to close escrow and to record this Agreement, if not already recorded, and all deeds and patents pertaining to that closing, in the manner specified in, and subject to the requirements of, the escrow instructions.

17. Judicial Confirmation of Validity of Settlement. The Port may choose to submit the settlement embodied in this Agreement to a court of competent jurisdiction to confirm the validity of the settlement or to quiet the Port's title by court judgment, as authorized by Section 12 of AB 418. The Commission shall cooperate with the Port in obtaining such a confirmatory judgment. Upon entry of a judgment confirming the validity of the settlement embodied in this Agreement, or quieting the Port's title in accordance with this Agreement, each Party shall be deemed to have waived any right to appeal from such judgment.

18. Effect of a Judicial Finding of Invalidity. A judicial determination that any portion of this Agreement is invalid shall not invalidate the remainder. If a court finally holds any term, provision, covenant, or condition of this Agreement to be invalid, void or unenforceable, the Parties shall amend this Agreement or take other action necessary to achieve the intent of this Agreement in a manner consistent with the ruling of the court.

19. Impacts of Sea Level Rise.

a. The exchange authorized by this Agreement is intended to establish with certainty the boundary between lands free of the Trust and lands subject to the Trust within the Pier 70 Area, which boundary is intended to be fixed and not subject to change by erosion, accretion, reliction, or submergence, whether due to natural or artificial causes. However, if lands established as free of the Public Trust by the exchange authorized by this Agreement should later become submerged or subject to the ebb and flow of the tide below the elevation of mean high water from waters of the San Francisco Bay, whether due to either erosion or sea level rise ("**Inundation**"), those lands, for so long as the condition of Inundation exists, shall be subject to an easement in favor of the Public Trust ("**Public Trust Easement**") provided, however, that the Public Trust Easement shall not attach until Inundation has existed continuously for five years. Prior to the attachment of the Public Trust Easement, neither the Public Trust Easement nor the Commission shall prevent the right of any owner of the inundated lands to reclaim or otherwise restore the lands to their pre-Inundation condition so long an owner

has begun activities to exercise this right within one year after Inundation. An owner's submittal of an application for any permit required for reclamation or restoration and reasonable efforts to complete the permitting process are sufficient, but not necessary, evidence that the owner has begun to exercise the right to reclamation or restoration provided herein. The Commission may delay the attachment of the Public Trust Easement for a specified period by resolution based upon its finding that reclamation or restoration could not be completed with the five-year period of Inundation specified herein,.

b. Nothing in this Agreement obligates the Commission to protect or cause to be protected any privately held uplands, including, but not limited to, constructing or causing to be constructed any protective structures that benefit any privately held uplands. Further, nothing in this Agreement shall be construed as creating any duty on the part of the Port or the Commission to the owners or lessees of any properties within the Pier 70 Area to provide protection against sea level rise, Inundation from any cause, avulsions, or tsunamis.

c. Nothing in this Section is intended to limit (a) rights a Party may have under applicable law to take actions to preserve the boundaries established by this Agreement, including without limitation the rights of a Party to undertake measures to protect its property, including lands freed from the Trust at the locations established pursuant to this Agreement, or to file an action within the applicable limitations period to preserve the title interests of such lands established by this Agreement, or (b) rights the public has under applicable law to navigate, fish, or otherwise use navigable waters on Inundated lands, including but not limited to any rights arising under *Bohn v. Albertson* (1951) 107 Cal.App.2d 738 and *People ex rel Baker v. Mack* (1971) 19 Cal.App.3d 1040.

20. Agreement Not To Encumber. Except to the extent consistent with the purposes of this Agreement, or as otherwise provided herein, the Port shall not sell, transfer, assign, mortgage, pledge, or hypothecate, whether by operation of law or otherwise, any of its right, title, or interest in or to any portion of the Public Trust Lands between the effective date of this Agreement and the closing on the exchange without the Commission's prior written consent. For purposes of this section, a lease or other grant of rights in the Public Trust Lands that is authorized by the Burton Act or AB 418 shall be deemed consistent with the purposes of this Agreement.

21. Allocation of Costs and Expenses. The Port shall pay the expenses and fees of the escrow agent, including those costs associated with document preparation and recordation of this Agreement, its deeds and patents, and any associated documents. The Port shall also pay expenses and fees associated with any title insurance policy for the Trust Termination Lands. Each Party will bear all other fees, costs, and expenses of any attorney, engineer, or other person that the Party employs or retains in connection with the transactions underlying this Agreement.

22. Acceptance of Conveyances and Consent to Recording. By their execution of this Agreement, the Parties each agree to accept the conveyance of rights, titles, and interests in land referred to in this Agreement and consent to the recording of this Agreement and related documents.

23. Further Assurances. Unless prohibited by law, the Parties will perform such other acts, and execute, acknowledge, and deliver all further conveyances and other instruments that

may be necessary to fully assure to the other Parties all of the respective properties, rights, titles, interests, remedies, powers, and privileges to be conveyed or provided for by this Agreement.

24. Agreement for Compromise and Settlement. It is expressly understood by the Parties that the provisions set forth in this Agreement have been agreed upon for purposes of compromising and settling disputed interests in the Public Trust Lands, Trust Termination Lands, and Adjacent Submerged Lands.

25. No Admission or Effect if Agreement Not Made Effective. If this Agreement does not become effective, or becomes effective but is declared by a final court judgment to be invalid, nothing in this Agreement shall constitute, or be construed as, an admission by any Party or evidence concerning the boundaries, physical character, or character of title or interest in the Pier 70 Area or in the Adjacent Submerged Lands.

26. No Effect on Other Lands. The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any Party or evidence concerning the boundaries, physical character, or character of title to or interest in any lands outside the Pier 70 Area and the Adjacent Submerged Lands.

27. No Determination of Trust Consistency. Nothing in this Agreement shall be construed as a determination by the Commission regarding the Public Trust consistency of any proposed or existing use of the Public Trust Lands or Adjacent Submerged Lands.

28. Agreement Binding on Successors. All the terms, provisions, and condition of this Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, successors, and assigns of the Parties.

29. Modification. No modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by the Parties to this Agreement.

30. No Effect on Other Government Jurisdiction. This Agreement has no effect on the regulatory, environmental or other jurisdiction of any federal, state, local, or other government entity not a party to this Agreement.

31. Headings. The title headings of the sections of this Agreement are inserted for convenience only and shall not be considered in construing this Agreement.

32. Notice. Any notice required pursuant to this Agreement shall be in writing and given by delivering the notice in person, by commercial courier, or by sending it by registered or certified mail, or overnight mail, return receipt requested, with postage to the addresses shown below or to such other address as the applicable Party may provide. For the convenience of the Parties, notice also may be given by electronic mail in addition to one of the above methods, at the addresses listed below:

Commission:

State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Attn: Chief Counsel
Email: _____

With copies to:

Office of the Attorney General
State of California
1515 Clay Street, 20th Floor
Oakland, CA 94612
Attn: _____
Email: _____

Port:

Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111
Attn: _____
Email: _____

With copies to:

Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111
Attn: Port General Counsel
Email: _____

33. Approvals and Consents. Unless otherwise provided in this Agreement, whenever an approval, consent or satisfaction is required of a Party, the approval, consent, or satisfaction shall be given on behalf of the Party by the representative listed below:

- a. If the Party is the Commission: the Executive Officer of the Commission.
- b. If the Party is the Port: the Executive Director of the Port.

34. Correction of Technical Errors. If by inadvertence, and contrary to the Parties' intention of, errors exist in any legal description, parcel boundaries, map, drawing, or other part of this Agreement or any exhibit hereto, the Parties affected by the error by mutual agreement may correct such error by memorandum reflecting their intent when approving and executing this Agreement. The Executive Officer and the Executive Director of the Port may approve and execute a "Memorandum of Correction" without amending this Agreement.

35. Effective Date. This Agreement shall become effective when fully executed. For purposes of bringing a validation action under Section 17, this Agreement shall be deemed

entered on the date signed by the Executive Officer, who shall be the last to sign before the Governor.

36. Exhibits. **Exhibit A** through **Exhibit I**, inclusive, are attached to and are incorporated by reference as parts of this Agreement.

Executed by a duly authorized officer of each Party on the date opposite each signature.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

DATED: _____, 2018

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____
Jennifer Lucchesi
Executive Officer

Approved as to form:

DATED: _____, 2018

XAVIER BECERRA
Attorney General of the
State of California

By: _____
Deputy Attorney General

DATED: _____, 2018

PORT OF SAN FRANCISCO

By: _____
Elaine Forbes
Executive Director

Approved as to form:

DATED: _____, 2018

DENNIS J. HERRERA,
City Attorney

By: _____
Eileen Malley
Port General Counsel

DATED: _____, 2018

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Naomi Kelly
San Francisco City Administrator

IN APPROVAL WHEREOF, I, Edmund G. Brown, Jr.,
Governor of the State of California, have set my hand
and caused the Seal of the State of California to be
hereunto affixed pursuant to section 6107 of the Public
Resources Code of the State of California. Given under
my hand at the City of Sacramento this _____, 2018.

By: _____
Edmund G. Brown Jr.
Governor, State of California

Attest:
SECRETARY OF STATE

By: _____
Alex Padilla
Secretary of State

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Name/Description</u>
A	Legal Description and Plat of Pier 70 Area
B	Legal Description and Plat of Public Trust Lands
C	Legal Description and Plat of Trust Termination Lands
D	Legal Description and Plat of Adjacent Submerged Lands
E	Form of Port Quitclaim
F	Form of Public Trust Patent
G	Form of Trust Termination Patent
H	Diagram of Trust Configuration
I	Diagram of Trust Streets