

1 [Amendment to Disposition and Development Agreement - FC Pier 70, LLC - Pier 70]

2

3 **Resolution approving a second amendment to the Disposition and Development**
4 **Agreement between the Port and FC Pier 70, LLC for the Pier 70 28-Acre Site Project;**
5 **authorizing the Executive Director of the Port to enter amendments or modifications to**
6 **the second amendment that do not materially increase the obligations or liabilities to**
7 **the City and are necessary to effectuate the purposes of the Resolution; and adopting**
8 **findings under the California Environmental Quality Act.**

9

10 WHEREAS, California Statutes of 1968, Chapter 1333 (as amended, the “Burton Act”)
11 and Charter Sections 4.114 and B3.581 empower the City and County of San Francisco
12 acting through the San Francisco Port Commission (the “Port”) with the authority and duty to
13 use, conduct, operate, maintain, manage, regulate and control the lands within Port
14 jurisdiction; and

15 WHEREAS, The Port owns approximately 28 acres at Pier 70, bounded generally by
16 Michigan Street on the west, 22nd Street on the south, San Francisco Bay on the east, and
17 20th street on the north (the “28-Acre Site”); and

18 WHEREAS, FC Pier 70, LLC, a Delaware limited liability company (the “Developer”)
19 and the Port entered into that certain Disposition and Development Agreement (the “Original
20 DDA”), a copy of which is on file with the Clerk of the Board of Supervisors in File No. 170986
21 and incorporated herein by reference, that provides the overall roadmap for development of
22 the 28-Acre Site; and

23 WHEREAS, The Original DDA was amended by that certain First Amendment to Pier
24 70 DDA (Self-Warranty) dated July 7, 2022 (as amended, the “DDA”), a copy of which is on

25

1 file with the Clerk of the Board of Supervisors in File No. 240204 and incorporated herein by
2 reference; and

3 WHEREAS, The DDA contemplates the Port initially leasing the 28-Acre Site to the
4 Developer for construction of horizontal improvements to be accepted by the Port or City, as
5 applicable and, ultimately, leasing and selling parcels in the 28-Acre Site to vertical
6 developers for development of a mixed-used project (the “Project”) that will include, at full
7 build-out: 1) 1,100 to 2,150 new residential units, at least 30% of which will be on-site housing
8 affordable to a range of low- to moderate-income households; 2) 1 million to 1.75 million gross
9 square feet of new commercial and office space, including space for small-scale
10 manufacturing, retail, and neighborhood services; 3) up to 240,000 gross square feet of retail,
11 arts and light industrial uses; and 4) 6.5 acres of new open space; and

12 WHEREAS, The Developer commenced construction of horizontal improvements for
13 Phase 1 of the Project in March of 2019 upon issuance of Street Improvement Permit 19IE-
14 00245 (as modified by Instructional Bulletins #1 through #13, the “Street Improvement
15 Permit”) by the Department of Public Works (“Public Works”); and

16 WHEREAS, The improvements constructed pursuant to the Street Improvement Permit
17 (collectively, the “Phase 1 Public Infrastructure”) include improvements located within portions
18 of 20th, 21st, 22nd, Louisiana, and Maryland Streets and the traffic signal conduit located
19 within a portion of Illinois Street; and

20 WHEREAS, The Phase 1 Public Infrastructure also includes San Francisco Public
21 Utilities Commission infrastructure (including electrical power substructure; stormwater,
22 sewer, domestic water, recycled water, and auxiliary water systems; and streetlights) and
23 specific Municipal Transportation Agency improvements (including signage and striping)
24 outside of the proposed City public right-of-ways, on and in Louisiana Street between 20th
25 and 21st Street (collectively, the “City Improvements on Port Street”); and

1 WHEREAS, Public Works inspected the Phase 1 Public Infrastructure and, beginning
2 in March 2022, Public Works issued a series of conditional Notices of Completion to the
3 Developer finding the Phase 1 Public Infrastructure was complete in accordance with the
4 Street Improvement Permit and ready for its intended use; and

5 WHEREAS, In January 2024, the Port conditionally approved the Developer’s request
6 for a SOP Compliance Determination (as defined in the DDA), which established the
7 Developer’s compliance with the outside date set forth in the DDA for the completion of
8 certain Phase 1 horizontal improvements and construction of those horizontal improvements
9 in accordance with applicable project and regulatory requirements; and

10 WHEREAS, Generally, Phase 1 Public Infrastructure built to City standards will be
11 owned and maintained by the City (“City Acceptance Items”) and include the City
12 Improvements on Port Street; and

13 WHEREAS, Phase 1 Public Infrastructure not built to City standards generally will be
14 owned and maintained by the Port (the “Port Acceptance Items”) and include: the one-block
15 segment of Louisiana Street between 20th Street and 21st Street, the frame of former Building
16 15 that spans 22nd Street, custom street and sidewalk paving materials, bicycle racks, street
17 furniture, trash cans, bollards, sidewalk landscaping and irrigation, retaining walls and portions
18 of utility laterals serving Port-owned buildings; and

19 WHEREAS, Per the DDA, the Developer is responsible for maintenance of Port
20 Acceptance Items until they are accepted by the Port; upon Port Commission acceptance,
21 services special taxes from the Pier 70 Leased Properties Community Facilities District
22 (“CFD”) and Pier 70 Condo CFD are identified as the funding source for the ongoing
23 maintenance of these items; and

24 WHEREAS, The Pier 70 Leased Properties CFD and Pier 70 Condo CFD were formed
25 by the Board of Supervisors in 2020 by Resolution Nos. 011-20 and 009-20, respectively; and

1 WHEREAS, Due to delayed vertical development in Phase 1 of the Project, there are
2 currently no developed properties subject to services special taxes; and, as a result, there will
3 be a period when services special taxes are unavailable or insufficient to cover ongoing
4 maintenance costs of the Port Acceptance Items; and

5 WHEREAS, The Port and Developer desire to enter into a second amendment to the
6 DDA (the "Second DDA Amendment", a copy of which is on file with the Clerk of the Board of
7 Supervisors in File No. 240204 and incorporated herein by reference) to allow Developer to
8 perform and fund the ongoing maintenance of the Phase 1 Port Acceptance Items as a cost to
9 be reimbursed from public financing sources until such time as services special taxes become
10 sufficiently available; and

11 WHEREAS, Developer's payments will be considered Project costs earning a return
12 pursuant to the DDA but will only accrue a return until the earlier of: 1) one year after issuance
13 of a temporary certificate of occupancy for the first new vertical project or 2) June 30, 2028;
14 provided however, this date will be December 31, 2028, if Port has entered into a Parcel
15 Lease (as defined in the DDA) with a Vertical Developer Affiliate (as defined in the DDA) prior
16 to June 30, 2025; and

17 WHEREAS, Costs incurred after the date specified above will be eligible for
18 reimbursement but will not accrue a return; and

19 WHEREAS, The Second DDA Amendment is in the best interest of the Port and the
20 Project because: 1) the Port does not have to appropriate and expend Harbor Funds; 2) the
21 timeframe within which Developer will be entitled to a return on the maintenance costs is
22 limited; 3) a source of maintenance funding for the Port Acceptance Items is ensured; and 4)
23 the acceptance of Port Acceptance Items and City Acceptance Items can move forward,
24 which will make the improvements available to serve the Project, existing Port tenants and the
25 general public; and

1 WHEREAS, On January 23, 2024, by Resolution No. 24-04, the Port Commission
2 concluded that the Second DDA Amendment is in the best interest of the Port and approved
3 the Second DDA Amendment, and a copy of said Resolution is on file with the Clerk of the
4 Board in File No. 240204 and incorporated herein by reference; and

5 WHEREAS, On January 23, 2024, by Resolution No. 24-03, the Port Commission
6 approved the acceptance of the Port Acceptance Items subject to several conditions,
7 including entry into the Second DDA Amendment, and a copy of said Resolution is on file with
8 the Clerk of the Board in File No. 240204 and incorporated herein by reference; and

9 WHEREAS, The Board of Supervisors is considering acceptance of the City
10 Acceptance Items pursuant to an ordinance on file with the Clerk of the Board in File
11 No. 240087 and incorporated herein by reference; and

12 WHEREAS, In a letter dated January 25, 2024, the Planning Department determined
13 that the actions contemplated in this resolution comply with the California Environmental
14 Quality Act (California Public Resources Code Sections 21000 et seq.) and do not trigger the
15 need for subsequent environmental review (the "CEQA Determination"), and said
16 Determination is on file with the Clerk of the Board of Supervisors in File No. 240087 and is
17 incorporated herein by reference; now, therefore be it

18 RESOLVED, That the Board of Supervisors affirms the CEQA Determination; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors approves the Second DDA
20 Amendment; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors authorizes the Port's Executive
22 Director, or her designee, to execute the Second DDA Amendment in substantially the form
23 on file with the Clerk of the Board of Supervisors in File No. 240204; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors authorizes all officers,
25 employees, and agents of the Port and the City to take all steps that they deem necessary or

1 appropriate, to the extent permitted by applicable law, in order to implement the Second DDA
2 Amendment in accordance with this resolution, including preparation and attachment of
3 exhibits, execution of subsequent documents, or to otherwise effectuate the purpose and
4 intent of this resolution and the Second DDA Amendment; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
6 Director of the Port, or her designee, to enter into any amendments or modifications to the
7 Second DDA Amendment that the Executive Director determines, in consultation with the City
8 Attorney, are in the best interest of the Port, do not materially decrease the benefits to or
9 materially increase the obligations or liabilities of the Port, and are in compliance with all
10 applicable laws; and, be it

11 FURTHER RESOLVED, That within thirty (30) days of entering the Second DDA
12 Amendment, the Port shall provide copies of said document to the Clerk of the Board for
13 inclusion into the official file.

14
15 RECOMMENDED BY:

16
17 _____
18 */s/*
Elaine Forbes, Port Executive Director