

Recording Requested by:

Port of San Francisco

When Recorded Mail to:

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

Exempt from recording fees under Government Code §27383

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

[Pier 70, Port of San Francisco]

SECOND AMENDMENT TO PIER 70 DDA
(Phase 1 FC Project Area Maintained Facilities; Self-Warranty; Schedule of Performance;
Fronting Property Owners)

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

SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

(Phase 1 FC Project Area Maintained Facilities; Self Warranty; Schedule of Performance)

This SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Second Amendment**”) is entered into between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), and **FC PIER 70, LLC**, a Delaware limited liability company (“**Developer**”) (collectively, the “**Parties**”), as of _____, 2024.

RECITALS

A. Port and Developer entered into that certain Disposition and Development Agreement, dated as of May 2, 2018, recorded in the Official Records on May 25, 2018, as Instrument No. 2018-K619435-00, as amended by that certain First Amendment to Pier 70 DDA dated July 7, 2022 (Self-Warranty) and recorded in the Official Records as Document 2022-083565 (the “**First Amendment (Self-Warranty)**”), that certain First Memorandum of Technical Corrections, recorded in the Official Records on September 12, 2019 as Document No. 2019-K830531-00 and that Second Memorandum of Technical Corrections, recorded in the Official Records on January 16, 2020 as Document No. 2020-K891134-00, and as modified by that certain Technical Amendment #1 to DDA Exhibit B3 (Affordable Housing Plan) dated November 7, 2018 and that certain First Addendum to DDA Exhibit C1 (Financing Plan) dated February 8, 2019, (as the same may hereafter be amended, supplemented, modified and/or assigned from time to time, the “**DDA**”). As of the date of this Second Amendment, the DDA is recorded against the 28-Acre Site more particularly described in *Exhibit A* attached hereto. All capitalized terms not defined in this Second Amendment shall have the meaning ascribed to them in the DDA.

B. Section 4.6(d)(i) of the Financing Plan for the 28-Acre Site Project, attached as DDA Exhibit C1, recites that Port informed Developer that it would not enter into the DDA or Financing Plan without ensuring an ongoing funding source for Ongoing Maintenance Costs. In furtherance thereof, the Financing Plan establishes the Parties’ agreement on the use of Services Special Taxes to pay for Ongoing Maintenance Costs of the FC Project Area Maintained Facilities, which include Public ROWs in the FC Project Area.

C. On November 23, 2022, the City’s Public Works Department issued a Notice of Completion for the Phase 1 Required Infrastructure that is identified in the Phase 1 PIA. The Phase 1 Required Infrastructure included certain Public ROWs located within the portions of the FC Project Area shown on the Plat Map of Property attached hereto as *Exhibit B* (the “**Phase 1 Public ROWs**”), which will be attached to the DDA as *Exhibit B14*. Developer irrevocably offered the Phase 1 Public ROWs to the City and/or the Port through that certain Amended and Restated Offer of Improvements recorded in the Official Records on January 25, 2024, as Document No. 2024009693 (the “**Amended and Restated Offer of Improvements**”).

D. The Phase 1 Public ROWs consist of (i) certain public right-of-way improvements that the City will accept for maintenance and liability purposes (subject to Public Works Code Section 706) that are more particularly described in the Amended and Restated Offer of Improvements, but expressly excluding Lot B as shown on Final Map No. 9585 recorded in the Official Records on October 23, 2020 as Document #2020035295 (the “**Phase 1 Final Map**”) (such improvements excluding Lot B, collectively, the “**Phase 1 City-Owned ROWs**”); (ii) certain public utility improvements the City will accept for maintenance and liability purposes lying within Lot B (portion of Louisiana Street) as shown on the Phase 1 Final Map; (iii) the public right-of-way improvements that the Port will accept for maintenance and liability purposes lying within Lot B (portion of Louisiana Street) as shown on the Phase 1 Final Map (such improvements, a “**Port-Only Street**” per the Acceptance MOA); and (iv) certain non-standard right-of-way and sidewalk improvements and elements that the Port will accept for maintenance and liability purposes, all as identified in the Acceptance MOA. Items (i) and (ii) in the preceding sentence are referred to herein collectively as the “**Phase 1 City-Owned ROW Facilities**”). Items (iii) and (iv) in the preceding sentence, and the standard sidewalk elements of the Phase 1 City-Owned ROWs that are subject to the fronting property owner maintenance and liability obligations of Public Works Code Section 706, are referred to herein collectively as the “**Phase 1 Non-City ROW Facilities**”. The Parties anticipate that the Port and City will enter into the Acceptance MOA at or around the same time as City and Port Acceptance (as defined in the Phase 1 PIA) of the Phase 1 Public ROWs.

E. The Phase 1 Non-City ROW Facilities are a component of the Phase 1 Public ROWs, which are Phase Improvements. Per Section 15.10(a) of the DDA, Developer is required to maintain Phase Improvements that will be under Port jurisdiction until Port Acceptance. After Port Acceptance, Section 15.10(c) of the DDA and Sections 1.3(a)(vii), 1.3(b)(v), and 4.6(a) of Financing Plan require that their Ongoing Maintenance Costs be paid by Services Special Taxes levied on Developed Property in the Pier 70 Leased Property CFD (per Financing Plan Section 1.3(a)(vii)) and Zone 2 of the Pier 70 Condo CFD (per Financing Plan Section 1.3(b)(v)). Under the Rate and Method of Apportionment of Special Tax for each of the Pier 70 Leased Property CFD and the Pier 70 Condo CFD, Services Special Taxes are levied only on Developed Property, which means that a Taxable Parcel will be levied Services Special Taxes beginning in the City Fiscal Year following the City Fiscal Year in which the first certificate of occupancy for the Vertical Improvements on the Taxable Parcel was issued.

F. Developer has completed the Phase 1 Public ROWs, including the Phase 1 Non-City ROW Facilities. However, because there is no Developed Property within the Pier 70 Leased Property CFD or Zone 2 of the Pier 70 Condo CFD currently subject to the Services Special Taxes as of the date of this Second Amendment, there will be a period of time where Services Special Taxes are unavailable or insufficient to cover the Ongoing Maintenance Costs for the Phase 1 Non-City ROW Facilities from and after Acceptance by the Port.

G. Although the DDA does not obligate Developer to cover the Ongoing Maintenance Costs of Public ROWs after Acceptance, the Developer agreed pursuant to Section 4.6(c)(i) of the Financing Plan to establish a supporting framework to replace or supplement the Services Special Taxes to assist in funding the Ongoing Maintenance Costs, if necessary.

H. The Parties anticipate that Services Special Taxes levied on future Developed Property will eventually cover these Ongoing Maintenance Costs, but until those funds are

available, Developer has agreed to fund the Ongoing Maintenance Costs for the Phase 1 Non-City ROW Facilities solely to the extent set forth herein, and further subject to the terms and conditions of this Second Amendment, including the treatment of Developer's costs as Horizontal Development Costs.

I. Port is entering into a Interdepartmental Master Encroachment Permit (the "IMEP") that sets forth the terms and conditions under which the Port's non-standard right-of-way and sidewalk improvements and elements may encroach within the Phase 1 City-Owned ROWs, including terms and conditions around Port's maintenance obligations. The Parties contemplate that Developer shall perform the Developer Phase 1 Maintenance Obligations (as defined herein) hereunder primarily pursuant to a provision of the IMEP that allows the Port to assign those maintenance obligations to Developer, and for the remaining Port-Only Street (as defined in the Acceptance MOA), under a license.

J. The Parties also desire to make adjustments to the agreements set forth in the First Amendment (Self-Warranty), on the further terms and conditions set forth herein.

J. The Parties also desire to make minor technical corrections to the Schedule of Performance, on the further terms and conditions set forth herein.

K. The Parties also desire to set forth their mutual understandings with respect to the maintenance of public sidewalks built to City standard and the treatment of Special Services Taxes in connection therewith.

L. The Parties are entering into this Second Amendment in accordance with the provisions of Section 1.4(a) of the DDA Appendix.

A G R E E M E N T

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

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. **Effective Date.** This Second Amendment shall be effective upon the latest to occur of the following: (i) the effective date of a Port Commission resolution accepting any of the Phase 1 Non-City ROW Facilities; and (ii) the date that Port and Developer each duly execute and deliver this Second Amendment.

3. **Phase 1 FC Project Maintained Facilities Amendments.**

a. The following definitions are added to the Appendix:

"Available Services Special Taxes" is defined in DDA Section 15.10(d)(iii)(1).

"Calendar Year" is defined in DDA Section 15.10(d)(i)(3).

“CY Quarter” is defined in DDA Section 15.10(d)(iii)(2)(B).

“Developer Phase 1 Maintenance Obligations” is defined in DDA Section 15.10(d)(i)(2).

“Developer Maintenance Cost Budget” is defined in DDA Section 15.10(d)(ii)(1).

“Developer’s Eligible ROW Maintenance Costs” is defined in DDA Section 15.10(d)(iii)(1).

“Fronting Property Owner” means, with respect to any lot or portions of a lot immediately adjacent to any portion of the public right-of-way, any of the following: (i) any purchaser of a fee interest in a Development Parcel, (ii) any ground lessee of a Development Parcel under a ground lease with the Port having a term of at least 35 years, (iii) Port for parcels designated as open space on Final Transfer Map No. 9597, recorded on February 7, 2019 in Book HH of Survey Maps at Pages 89-98, inclusive in the Official Records of the City and County of San Francisco, or (iv) Port for any Development Parcels that have not been sold or ground leased for a term of at least 35 years.

“IMEP” is defined in DDA Section 15.10(d)(i)(2)(b)(ii).

“Maintenance Return Termination Date” is defined in DDA Section 15.10(d)(iv)(1).

“Non-Taxable Parcel” means an assessor’s parcel of real property or other real estate interest that is not a Taxable Parcel.

“Phase 1 City-Owned ROWs” means certain public right-of-way improvements that the City will accept for maintenance and liability purposes lying within Lot A and Lots C through F, as shown on the Phase 1 Final Map, and within a 14’ portion of future Maryland Street (Final Map 9597 Lot Z) immediately south of Lot F, subject to Public Works Code Section 706.

“Phase 1 Final Map” means Final Map No. 9585 recorded in the Official Records on October 23, 2020 as Document #2020035295.

“Phase 1 Maintenance Term” is defined in DDA Section 15.10(d)(i)(1).

“Phase 1 Non-City ROW Facilities” means (i) Standard Sidewalks within the Phase 1 City-Owned ROWs that will be accepted by the City, but for which the applicable Fronting Property Owner either retains responsibility for maintenance and liability under Public Works Code Section 706, or assigns responsibility to the Pier 70 Master Association; (ii) the Port-Only Street; and (iii) certain non-standard right-of-way and sidewalk improvements and elements that the Port will accept for maintenance and liability purposes, all as identified in the Acceptance MOA.

“**Phase 1 Non-City ROW Facilities Maintenance Standards**” is defined in DDA Section 15.10(d)(i)(2).

“**Phase 1 Port Maintenance Obligations**” is defined in DDA Section 15.10(d)(i)(3).

“**Phase 1 Public ROWs**” means certain Public ROWs included in the Phase 1 Required Infrastructure and located within the portions of the FC Project Area shown on the Plat Map of Property attached to the DDA as ***Exhibit B14***.

“**Pier 70 Master Association**” means the master property owner/lessee association formed in accordance with the Pier 70 Master Association Documents.

“**Pier 70 Master Association Documents**” means, collectively, the Pier 70 Declaration of Covenants and Restrictions and associated documents.

“**Port’s Eligible ROW Maintenance Costs**” is defined in DDA Section 15.10(d)(iii)(2)(A).

“**Port Maintenance Cost Budget**” is defined in Section 15.10(d)(ii)(3).

“**Port-Only Street**” is defined in the Acceptance MOA.

Port-Only Street Maintenance License is defined in DDA Section 15.10(d)(i)(2)(b)(i).

“**Port Performed Maintenance**” is defined in DDA Section 15.10(d)(iv).

“**Port’s Annual Statement**” is defined in DDA Section 15.10(d)(iii)(2)(B).

“**Port’s Quarterly Statement**” is defined in DDA Section 15.10(d)(iii)(2)(B).

“**Third-Party Maintenance**” is defined in DDA Section 15.10(d)(iv).

“**Standard Sidewalks**” is defined in DDA Section 15.10(d)(i)(2)(b)(iii).

- b. Section 15.10 of the DDA is amended by adding the following Section 15.10(d) and (e) at the end of the section:

“(d) Phase 1 Non-City ROW Facilities Maintenance

- (i) Maintenance Obligations of Accepted Phase 1 Non-City ROW Facilities.

- (1) The “**Phase 1 Maintenance Term**” shall mean the period commencing upon the date that both of the following have occurred: (i) the City effectively accepts the Phase 1 City ROW Facilities (as evidenced by the effectiveness of the applicable Board of Supervisors acceptance Ordinance); and (ii) the Port Commission effectively accepts the Port-

Only Street and the non-standard right-of-way and sidewalk improvements and elements identified in the Acceptance MOA (as evidenced by the recordation of a Partial Release of Master Lease in accordance with Master Lease Section 1.1(b)); and ending upon the earliest to occur of: (i) the date that Services Special Taxes sufficient to fully cover the Ongoing Maintenance Costs of all Phase 1 Non-City ROW Facilities other than Standard Sidewalks fronting Taxable Parcels within Phase 1 are actually collected by the Pier 70 Leased Property CFD and Zone 2 of the Pier 70 Condo CFD and committed to those purposes; (ii) the two-year anniversary of the date that the Port issues an SOP Compliance Determination for Public ROWs within Phase 2; and (iii) the expiration or earlier termination of the DDA.

(2) Maintenance by Developer.

(a) Developer Phase 1 Maintenance Obligations. During the Phase 1 Maintenance Term, Developer shall be responsible for the maintenance of the Phase 1 Non-City ROW Facilities in good repair and condition (collectively, the “**Developer Phase 1 Maintenance Obligations**”) in accordance with the terms and conditions of the maintenance standards attached to the DDA as ***Exhibit B15*** (“**Phase 1 Non-City ROW Facilities Maintenance Standards**”).

(b) Instruments Governing Developer Performance.

(i) For sidewalks located within Port-Only Streets, Port and Developer will enter into a maintenance license governing Developer’s performance, substantially in the form attached to the DDA as ***Exhibit B11***, which shall include the Phase 1 Non-City ROW Maintenance Standards as an exhibit (the “**Port-Only Street Maintenance License**”).

(ii) For all Phase 1 Non-City ROW Facilities other than Standard Sidewalks, Port shall assign its maintenance obligations under that certain Interdepartmental Master Encroachment Permit by and between Port and Public Works (the “**IMEP**”) to Developer for the Phase 1 Maintenance Term and Developer shall perform the Developer Phase 1 Maintenance Obligations for such areas pursuant thereto. Developer’s obligations thereunder shall terminate upon the expiration of the Phase 1 Maintenance Term unless the Parties have entered into new or replacement agreements with respect thereto.

(iii) For public sidewalk elements that are built to City-standard, are an official City-adopted sidewalk width and the maintenance of which would otherwise be the responsibility of the fronting property owner pursuant to Public Works Code Section 706 (“**Standard Sidewalks**”), Developer will assume maintenance obligations pursuant to a separate notice of assignment of the IMEP

pursuant to a Board of Supervisors ordinance whereunder Developer (or the Master Owners Association if it assumes the role of Maintenance Assignee under the IMEP (as defined in the IMEP) for some or all of the applicable Standard Sidewalks) will perform maintenance of the Standard Sidewalks within the Phase 1 Non-City ROW Facilities pursuant to Public Works Code 706 on behalf of all of the Fronting Property Owners within Phase 1, including the Port, for the Phase 1 Maintenance Term.

(iv) From and after the expiration of the Phase 1 Maintenance Term, Developer shall have no obligation under this Agreement, the IMEP or otherwise to maintain the Standard Sidewalks on behalf of any fronting property owner of a Non-Taxable Parcel, except to the extent explicitly set forth in one or more subsequent agreements between the owner of the Non-Taxable Parcel and the Developer. Such agreement may take the form of the Non-Taxable Parcel fronting property owner opting into the Master Owners Association for such limited purposes. In the absence of such agreement, Developer's responsibility to maintain the Standard Sidewalks fronting Non-Taxable Parcels shall terminate with the expiration of the Phase 1 Maintenance Term. Port shall reasonably cooperate with Developer with respect to the execution and implementation of the IMEP, including providing written documentation to Public Works evidencing the termination of Developer's obligations hereunder upon the expiration of the Phase 1 Maintenance Term and/or such replacement or substitute agreements as may have been approved by the Parties.

- (3) Maintenance by Port. Notwithstanding Section 15.10(d)(i)(2), the Parties acknowledge that the Port reserves the right to perform ongoing maintenance of the Phase 1 Non-City ROW Facilities during the Phase 1 Maintenance Term through its employees or contractors or by a third-party entity (such as a non-profit public benefit corporation) contracting with the Port through a lease, management contract, license or other instrument approved by the Port (collectively, the **"Phase 1 Port Maintenance Obligations"**) either (x) in Port's sole discretion subject to the limitations set forth herein or (y) in the event Developer fails to maintain in accordance with the Phase 1 Non-City ROW Facilities Maintenance Standards.

In the event Port elects to perform the Phase 1 Port Maintenance Obligations pursuant to (x) above, Port shall provide Developer with written notice on or before September 1 of any calendar year (January 1-December 31 referred to herein as a **"Calendar Year"**) during the Phase 1 Maintenance Term, accompanied by the Port's projected Port Maintenance Cost Budget, and Developer shall be relieved of the Developer Phase 1 Maintenance Obligations commencing on January

1 of the applicable year in which Port has provided notice of its election. Notwithstanding the foregoing, if the Port timely delivers its election to undertake the Phase 1 Port Maintenance Obligations, but the final Port Maintenance Cost Budget for the upcoming calendar year prepared in accordance with Section 15.10(d)(ii)(3) would exceed 10% of the actual costs incurred by Developer to perform the Phase 1 Developer Maintenance Obligations for the immediately preceding calendar year, Port's election shall be null and void, and Developer shall continue to perform the Phase 1 Developer Maintenance Obligations for the upcoming Calendar Year.

If Developer fails to meet the Phase 1 Non-City ROW Facilities Maintenance Standards, such failure shall be subject to the notice and cure provisions applicable to "Other Obligations" set forth in Section 11.2(c) of the DDA (provided that the cure period shall be 60 days or if the default cannot be cured within 60 days, Developer shall take steps to cure the default within the cure period and diligently complete the cure within a reasonable time). If the failure remains uncured after the expiration of the applicable cure period, Port may elect to perform the Phase 1 Port Maintenance Obligations pursuant to (y) above.

(ii) Phase 1 Maintenance Cost Budgets.

- (1) During the Phase 1 Maintenance Term, Developer shall prepare an annual maintenance cost budget that sets forth Developer's anticipated costs associated with its performance of the Phase 1 Developer Maintenance Obligations (the "**Developer Maintenance Cost Budget**"). The Parties have mutually approved a Developer Maintenance Cost Budget for the remainder of 2024 which is included as part of **DDA Exhibit B15** (Phase 1 Non-City ROW Facilities Maintenance Standards with Calendar Year 2024 Cost Budget).
- (2) As long as Developer has not been relieved of the Developer Phase 1 Maintenance Obligations pursuant to **Section 15.10(d)(i)(3)**, Developer shall provide Port with a draft Developer Maintenance Cost Budget for the upcoming Calendar Year starting with the date that is at least ninety (90) days prior to the start of Calendar Year 2025 and each Calendar Year thereafter during the Phase 1 Maintenance Term. Developer will coordinate closely with the Port and its own contractors to prepare the draft Developer Maintenance Cost Budget, based on the prior Calendar Year's scope and cost and anticipated changes for the forthcoming Calendar Year. Port shall review and comment on the proposed Developer Maintenance Cost Budget within fifteen (15) business days of receipt with respect to the reasonableness of the costs and scope. Developer shall use good faith efforts to reflect any Port comments received within such fifteen (15) business day period in the final Developer Maintenance Cost Budget for the applicable Calendar

Year, which may include, as appropriate, a reduction in the Phase 1 Non-City ROW Facilities Maintenance Standards if the Port objects. Developer shall report to Port if it reasonably anticipates actual Eligible ROW Maintenance Costs will exceed the Developer Maintenance Cost Budget by more than five percent (5%) in any given Calendar Year and the Parties shall work together cooperatively to identify potential cost savings (such as modifications to the Phase 1 Non-City ROW Facilities Maintenance Standards).

- (3) If Port has elected to perform the Phase 1 Port Maintenance Obligations by providing a written notice thereof in accordance with Section 15.10(d)(i)(3), then concurrently with its election notice, Port shall provide Developer with a draft budget that sets forth Port's anticipated costs associated with its performance of the Phase 1 Port Maintenance Obligations (the "**Port Maintenance Cost Budget**") for the upcoming Calendar Year. Port shall also submit to Developer a draft of the Port Maintenance Cost Budget on or before September 1 of each subsequent Calendar Year during the Phase 1 Maintenance Term in which Port has elected to perform the Phase 1 Port Maintenance Obligations. Port will coordinate closely with the Developer to prepare the draft Port Maintenance Cost Budget, based on the prior Calendar Year's scope and cost and anticipated changes for the forthcoming Calendar Year. Developer shall review and comment on the proposed Port Maintenance Cost Budget within fifteen (15) business days of receipt with respect to the reasonableness of the costs and scope, and Port shall use good faith efforts to reflect Developer's comments in the final Port Maintenance Cost Budget for the applicable Calendar Year.

If, during the course of any Calendar Year in which Port performs the Phase 1 Port Maintenance Obligations, the Port reasonably determines that its actual Port's costs to maintain the Phase 1 Non-City ROW Facilities for that Calendar Year will exceed the Port Maintenance Cost Budget, Port shall seek Developer's consent to amend the Port Maintenance Cost Budget to reflect the revised anticipated cost of maintenance for such Calendar Year, which consent shall not be unreasonably withheld, conditioned, or delayed. Port shall be bound by the Port Maintenance Cost Budget, as it may be amended. Any Port costs to maintain the Phase 1 Non-City ROW Facilities that exceed the Port Maintenance Cost Budget, as it may be amended shall not be eligible for reimbursement.

(4) Port Third-Party Contracts.

- (a) Port may perform the Phase 1 Port Maintenance Obligations through a third-party contract, provided however, that any third-party contract that will be paid by funds provided by Developer shall require that Developer be made a party thereto on

terms reasonably acceptable to Developer; and further provided that if Port is unable to add Developer as a party after commercially reasonable efforts, the third-party contract shall provide Developer with appropriate remedies to recoup any losses for third-party claims (including insurance proceeds, if applicable) within the scope of the third-party contractor's indemnity or the Port and Developer shall have made other arrangements, in either case, subject to the reasonable approval of both Developer and Port. Port will include in any such contract funded by Developer the OFAC and Anti-Bribery provisions attached hereto as Schedule 15.10(d). Notwithstanding anything to the contrary herein, Developer shall have no obligation to pay funds for any third-party contractor that is found to be in violation of the OFAC and Anti-Bribery provisions set forth in Schedule 15.10(d).

Port shall also include in all such third-party contracts: (i) the requirement for the contractor to include, as additional insureds, the "Developer, and its Affiliates and each of their respective Agents and direct and indirect lenders and investors and all of their respective heirs, legal representatives, successors and assigns;" and (ii) a requirement to include within the definition of "Indemnified Parties" (or such comparable term defining the parties benefitted by contractors indemnity) the Developer, and its Affiliates and each of their respective Agents and direct and indirect lenders and investors and all of their respective heirs, legal representatives, successors and assigns.

(iii) Maintenance Costs of Accepted Phase 1 Non-City ROW Facilities.

(1) Developer's Eligible ROW Maintenance Costs. Notwithstanding **Section 15.10(c)** above, in accordance with Section 4.6(c)(i) of the Financing Plan, during the Phase 1 Maintenance Term, Developer shall pay for all Phase 1 Developer Maintenance Obligations (all such costs, the "**Developer's Eligible ROW Maintenance Costs**") except as may otherwise be provided by Section 15.10(d)(iv)(2) below with respect to Special Services Taxes actually collected.

(2) Port's Eligible ROW Maintenance Costs; Developer Reimbursement.

(A) Notwithstanding Section 15.10(d)(iii)(1), if the Port has elected to perform the Phase 1 Port Maintenance Obligations in accordance with Section 15.10(d)(i)(3), the Port shall first apply Available Services Special Taxes toward the Phase 1 Port Maintenance Obligations. If Available Services Special Taxes are unavailable or insufficient to cover the Ongoing Maintenance Costs for accepted Phase 1 Non-City ROW Facilities, Port shall pay the Ongoing Maintenance Costs associated with

the Phase 1 Port Maintenance Obligations to the extent that such Ongoing Maintenance Costs exceed Available Services Special Taxes (the “**Port’s Eligible ROW Maintenance Costs**”), subject to reimbursement by Developer in accordance with Section 15.10(d)(iii)(2)(B) below.

(B) No later than thirty (30) days after the expiration of each quarter during any Calendar Year in which Port is performing the Phase 1 Port Maintenance Obligations (each, a “**CY Quarter**”), Port shall provide Developer with a detailed statement and supporting materials evidencing Port’s payment of Port’s Eligible ROW Maintenance Costs for the applicable CY Quarter (each, “**Port’s Quarterly Statement**”). The Port’s Quarterly Statement shall include, at a minimum, with respect to the applicable CY Quarter, (1) detailed City/Port staff timekeeping records and rates and third-party invoices actually paid by Port for the performance of the Phase 1 Port Maintenance Obligations; (2) the amount of all Available Services Special Taxes received in the applicable Calendar Year Quarter; (3) a comparison of the actual Port’s Eligible ROW Maintenance Costs for the applicable CY Quarter and the Calendar Year to date to the Port Maintenance Cost Budget for the same corresponding periods; and (4) the amount, if any, by which Port’s Eligible ROW Maintenance Costs for the applicable Calendar Year would exceed the Port Maintenance Cost Budget for the applicable Calendar Year. Without limiting the foregoing, the Port’s Quarterly Statement for the fourth CY Quarter shall also set forth all of the information required for each of Port’s Quarterly Statement but for the full Calendar Year (as to each, “**Port’s Annual Statement**”). Subject to the limitations of Section 15.10(d)(ii)(3) (with respect to costs that exceed the Port Maintenance Cost Budget), Developer shall reimburse Port for the Port’s Eligible ROW Maintenance Costs that exceed Available Services Special Taxes for the applicable CY Quarter within thirty (30) days of receipt of the Port’s Quarterly Statement. If the Parties disagree on the amount of Port’s Eligible ROW Maintenance Costs for the applicable CY Quarter, Developer may withhold the disputed amounts and the Parties will engage in a dispute resolution procedure under Section 10.4 (Binding Arbitration). To the extent that the dispute resolution procedure results in a decision favorable to the Port, Developer shall pay the applicable amount previously withheld within thirty (30) days after the binding arbitration decision is issued. If the Port’s Annual Statement shows an underpayment by Developer for the applicable Calendar Year, Developer shall pay Port the shortfall within thirty (30) days after written demand from Port. If the Port’s Annual Statement shows that Developer has overpaid the Port’s actual costs for the applicable Fiscal Year, Port shall credit the amount of such overpayment toward the subsequent years’ Port Maintenance Cost Budget, or, if Port elects not to perform the Port Maintenance Obligations for the following Calendar Year, Port shall refund Developer with the amount of such overpayment within thirty (30) days after the date of the applicable annual report. Notwithstanding the

foregoing, in no event shall Developer have any obligation to pay the Port for any costs incurred by Port to perform the Port Maintenance Obligations that exceed the Port Maintenance Cost Budget, as it may be amended with Developer consent, and any such amounts previously paid by Developer shall be deemed an overpayment by Developer and treated the same as any other overpayment hereunder.

(iv) Accounting and Developer Return.

(1) Any Developer's Eligible ROW Maintenance Costs incurred by Developer, or any Port's Eligible ROW Maintenance Costs paid by Developer to, or on behalf of Port, as applicable, shall be entered on the Developer Capital Schedule in the Phase and at the time in which such costs are incurred. Notwithstanding the foregoing or any other provision of the DDA or Financing Plan, Developer's Eligible ROW Maintenance Costs entered on the Developer Capital Schedule shall accrue a Developer Return until the date that is the earlier to occur of the following (herein, the "**Maintenance Return Termination Date**"): (i) December 31 of the City Fiscal Year following the fiscal year in which a Certificate of Occupancy is issued for the first Vertical Improvement to be developed on an Option Parcel; or (ii) June 30, 2028, provided however, the Maintenance Return Termination Date will be December 31st 2028 if Port has entered into a Parcel Lease with a Vertical Developer Affiliate prior to June 30, 2025. For purposes of clarity, all Developer's Eligible ROW Maintenance Costs and all Port's Eligible ROW Maintenance Costs paid by Developer shall be considered Soft Costs (and therefore Horizontal Development Costs) and shall be subject to repayment pursuant to the Financing Plan, whether such costs are incurred before or after the Maintenance Return Termination Date, and only the Developer Return associated with the Developer's Eligible ROW Maintenance Costs is limited by the Maintenance Return Termination Date. Developer Return associated with Developer's payment of Port's Eligible ROW Maintenance Costs pursuant to Port's election in Section 15.10(a)(i)(3)(x) shall not be limited by the Maintenance Return Termination Date.

(2) Any Services Special Taxes that are collected by the Pier 70 Leased Property CFD or Zone 2 of Pier 70 Condo CFD shall be applied in the following order:

First, during the Phase 1 Maintenance Term, to Ongoing Maintenance Costs of the Phase 1 Non-City ROW Facilities (and further provided that so long as Developer retains the obligation to perform the Phase 1 Developer Maintenance Obligations, the proceeds of any Services Special Taxes actually collected shall be paid directly to Developer as they are collected to fund Developer's Ongoing Maintenance Costs incurred in the applicable City Fiscal Year), and after the expiration of the Phase 1

Maintenance Term, to pay Ongoing Maintenance Costs other than the Standard Sidewalk Maintenance Costs for the applicable City Fiscal Year;

Second, any Special Services Taxes remaining at the end of the applicable City Fiscal Year shall be paid directly to Developer within thirty (30) days to reimburse Developer for the outstanding amount of Developer's Capital Schedule for Developer's Eligible ROW Maintenance Costs and Developer Return thereon (subject to the limitations of Section 15.10(d)(iv)), until the Developer's Capital Schedule for such amounts (including Developer Return) is reduced to \$0 (such amounts, the "**Phase 1 SST Developer Reimbursement Amount**");

Third, to reimburse Port for any of the Port's Eligible ROW Maintenance Costs not previously reimbursed by Developer pursuant to Section 15.10(d)(iii)(2)(B) or from Special Services Special Taxes (such amounts, the "**Phase 1 SST Port Reimbursement Amount**").

Without limiting the foregoing, in any City Fiscal Year in which Services Special Taxes are collected (whether or not such Services Special Taxes are collected during or after the Phase 1 Maintenance Term and subject to the limitations set forth in Section 15.10(e) below), Port shall levy the Services Special Taxes against each Taxable Parcel, up to the Maximum Services Special Tax (as defined in the RMA for each CFD) in an amount necessary to fully meet both (i) the Services Special Tax Requirement (as defined in the RMA for each CFD) for Ongoing Maintenance Costs other than the Standard Sidewalk Maintenance Costs, and (ii) the repayment to Developer and Port of the outstanding balance of the Phase 1 SST Developer Reimbursement Amount and the Phase 1 SST Port Reimbursement Amount until both are fully repaid.

(v) Insurance and Indemnity during Phase 1 Maintenance Term.

(1) Insurance. Developer shall maintain insurance as required pursuant to the notice of assignment to the IMEP and the Port-Only Street Maintenance License.

(2) Indemnification. Developer's indemnification obligations during the Phase 1 Maintenance Term shall be set forth in the notice of assignment to the IMEP and the Port-Only Street Maintenance License.

(vi) Incorporation of IMEP requirements into Master CC&Rs. The Master CC&Rs will include provisions required by the IMEP, as further described in DDA Exhibit D7 (Outline of Master Association Conditions, Covenants, and Restrictions), as amended and restated.

(e) Standard Sidewalk Maintenance; Vertical DDA Amendment. Unless Port explicitly takes on the responsibility, pursuant to a master major encroachment permit, to maintain standard sidewalks fronting or adjacent to a Taxable Parcel, the maintenance of which sidewalks would otherwise be the responsibility of the fronting property owner pursuant to Public Works Code Section 706 (and with respect to Port-owned streets, as Public Works Code Section 706 is applied to Port streets by and through Port Commission Resolution No. 07-55) (“**Standard Sidewalks**”), Port will have no responsibility for maintaining or funding the maintenance of Standard Sidewalks. As long as Port has not assumed the responsibility for maintaining or funding the maintenance of Standard Sidewalks as provided in the previous sentence, Port agrees that it will not include the Ongoing Maintenance Costs of the maintenance of Standard Sidewalks (the “**Standard Sidewalk Maintenance Costs**”) in the Services Special Tax Requirement (as defined in the RMA for each CFD) for each CFD in connection with the annual levy of Services Special Taxes (as defined in the RMA for each CFD). Nothing in the preceding sentence is intended to nor shall it be construed to limit the Port’s authority to levy the Services Special Taxes against each Taxable Parcel, up to the Maximum Services Special Tax (as defined in the RMA for each CFD), if required to fully fund the Services Special Tax Requirement as long as the Services Special Tax Requirement does not include the Standard Sidewalk Maintenance Costs during the time when the Port has not assumed the responsibility for maintaining or funding the maintenance of Standard Sidewalks.

Port’s agreement under this subsection 15.10(e) shall survive the expiration or earlier termination of the DDA Term. To that end, the Parties agree to amend Section 3.3 of DDA Exhibit D2 (Form of Vertical DDA) to add the following subsection 3.3(d):

3.3(d) The Agreement to Comply with CFD Matters recorded against title to the Property referenced in Section 3.3(b) hereof shall include a covenant by Port to ratably reduce the Services Special Taxes levied against the Property by the amount of the Ongoing Maintenance Costs (as defined in the DDA) for maintenance of the standard public sidewalk elements fronting the Property identified on **Schedule 3.3(d)** attached hereto (the “**Standard Sidewalk Maintenance Costs**”)¹, the maintenance of which would otherwise be the responsibility of Vertical Developer pursuant to Public Works Code Section 706 (as such responsibility may be assigned to and assumed by the Horizontal Master Owners’ Association pursuant to the a Master Major Encroachment Permit approved by the Board of Supervisors pursuant to Public Works Code Section 786) [**add for Port-owned sidewalks only**: and as implemented by and through that certain Port Commission Resolution No. 07-55]; provided, however that Port will be authorized to levy the Services Special Taxes against the Property up to the Maximum Services Special Tax (as defined in the RMA for each CFD), if required to fully meet the Services Special Tax Requirement (as defined

¹ Schedule 3.3(d) will show the PW 706 public sidewalks fronting the Property to be maintained by Vertical Developer (as that obligation may have been assigned to the Master Owners’ Association under the IMEP or by separate agreement).

in the RMA for each CFD) for (i) Ongoing Maintenance Costs other than the Standard Sidewalk Maintenance Costs, (ii) Phase 1 SST Developer Reimbursement Amount (as defined in the DDA) to the extent not otherwise reimbursed by Project Payment Sources other than Services Special Taxes, or (iii) Phase 1 SST Port Reimbursement Amount (as defined in the DDA) to the extent not otherwise reimbursed by Project Payment Sources other than Services Special Taxes.

c. Section 15.8(e)(ii) of the DDA is amended and restated as follows:

(ii) release Developer from future obligations for liability or repair of the accepted Port Acceptance Item or Deferred Infrastructure, as applicable, except to the extent provided under Section 15.8(d) (Sub-Surface Improvements Below Port Acceptance Items), Section 15.10(d) (Phase 1 Non-City ROW Facilities Maintenance), Section 9.3 (General Indemnity), Section 9.4 (Environmental Indemnity), and applicable warranties.

d. **DDA Exhibits.** The DDA is hereby amended to add (i) a new Exhibit B14 (DDA Exhibit B14 “Phase 1 Public ROWs”) in the form attached to this Second Amendment as Exhibit B, (ii) a new DDA Exhibit B15 (DDA Exhibit B15 “Phase 1 Non-City ROW Facilities Maintenance Standards with Calendar Year 2024 Cost Budget”) in the form attached to this Second Amendment as Exhibit C, and (iii) an amended and restated Exhibit D7 (DDA Exhibit D7 “Master Association Conditions, Covenants, and Restrictions”) in the form attached this Second Amendment as Exhibit D.

4. **Self-Warranty Amendments**

a. Definitions in Appendix.

i. The definition of “**Horizontal Development Costs**” in the Appendix is hereby amended by adding the following as new item (viii):

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

(X) such costs are not covered by the Flores Warranty;
(Y) in the event such costs are associated with a latent defect claim, such costs will not be considered Horizontal Development Costs to the extent Developer recovers such costs from Flores or another responsible party; and
(Z) the item needing correction, repair or replacement in the Required Infrastructure was built in accordance with approved Improvement Plans.”

ii. The following definitions are added to the Appendix:

“**J. Flores Contract**” means that certain contract by and between Horizontal Developer and Flores, dated May 4, 2023, a copy of which is on file with the Port’s Chief Harbor Engineer.

“**Phase 1 20th Street Lateral Repairs**” means the replacement of an existing sewer lateral and installation of a new lateral with a manhole along the centerline of 20th Street between Illinois Street and Michigan Street, as described in Exhibit B to the J. Flores Contract.

“**Phase 1 Flores Self-Warranty Period**” means the period commencing upon September 18, 2024, being the expiration of the Flores Warranty, and expiring upon the expiration of the Phase 1 Warranty Period.

“**Flores**” means J. Flores Construction Company, Inc., the subcontractor for the Phase 1 20th Lateral Repairs.

“**Flores Warranty**” means the Guarantee and Warranty provided by Flores pursuant to an agreement with Horizontal Developer, with a start date of September 18, 2023.

b. Self-Warranty. Section 15.9 of the DDA (as amended by the First Amendment (Self Warranty)) is further amended by adding the following language at the end of the section.

“In addition, Developer shall warrant the Phase 1 20th Street Lateral Repairs for the Phase 1 Flores Self-Warranty Period. During the Phase 1 Flores Self-Warranty Period, Developer will promptly notify the Port regarding any warranty claims that arise under the Phase 1 PIA with respect to the Phase 1 20th Street Lateral Repairs and will conduct and coordinate any correction, repair, or replacement of any defects thereto discovered during the Phase 1 Flores Self-Warranty Period. For the Port’s information, the parties shall cooperate in tracking Horizontal Development Costs incurred by Developer in connection with its correction, repair or replacement of defects to the Phase 1 20th Street Lateral Repairs during the Phase 1 Flores Self-Warranty Period.”

5. **Schedule of Performance Amendments.** DDA Exhibit B2 (Schedule of Performance) is hereby amended as follows (additions underlined):

Phase Schedule of Performance for Option Parcels, including Early Ground Lease Parcels	
Option Parcel	Outside Date

Execute Vertical DDA for Early Lease Parcel in Phase 1 (DDA § 2.2(f))	Two years after Commencement of Phase Improvements for Phase 1
Execute Vertical DDA for Early Lease Parcel in Phase 2 (DDA § 2.2(f))	Two years after Commencement of Phase Improvements for Phase 2
Outside Date for Execution of a Vertical DDA for all Option Parcels in a Phase 1 (DDA § 2.2(g))	Three years after the SOP Compliance Determination for all Phase Improvements within Phase 1 <u>other than Public Spaces.</u>
Outside Date for Execution of a Vertical DDA for all Option Parcels in a Phase 2 (DDA § 2.2(g))	Three years after SOP Compliance Determination for all Phase Improvements within Phase 2 <u>other than Public Spaces.</u>
Outside Date for Execution of a Vertical DDA for all Option Parcels in a Phase 3 (DDA § 2.2(g))	Three years after SOP Compliance Determination for all Phase Improvements within Phase 3 <u>other than Public Spaces.</u>

7. **Recording.** Port and Developer will execute, acknowledge and record this Second Amendment such that the recorded DDA reflects, as to those portions of the 28-Acre Site that remain subject to the DDA, the matters set forth in this Second Amendment; provided, however, the parties agree and acknowledge that failure to record this Second Amendment will have no effect on the validity or effectiveness of this Second Amendment.

8. **Entire Agreement.** This Second Amendment and the DDA contain all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Second Amendment are superseded in their entirety by this Second Amendment. No prior drafts of this Second Amendment or changes between those drafts and the executed version of this Second Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Second Amendment.

8. **Agreement Unmodified; Amendments.** Except as expressly set forth in this Second Amendment, the Agreement shall remain unmodified and in full force and effect, and is hereby affirmed and ratified. No amendment to the Agreement nor this Second Amendment or any part thereof shall be valid unless it is in writing and signed by all of the parties thereto. In the event of any inconsistency between the terms of the Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall govern and control in all respects. All references to the Agreement shall be deemed references to the Agreement as amended hereby.

9. **Severability.** If any provision of this Second Amendment or the application thereof to any person, entity or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Second Amendment, or the application of such provision to persons, entities or

circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this Second Amendment shall be valid and be enforceable to the fullest extent permitted by law.

10. **Counterparts.** For convenience, the signatures of the parties to this Second Amendment may be executed and acknowledged on separate pages which, when attached to this Second Amendment, shall constitute as one complete Second Amendment. This Second Amendment may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Second Amendment.

11. **Relationship of the Parties.** Port is not, and none of the provisions in this Second Amendment shall be deemed to render Port, a partner in Developer's business, or joint venturer or member in any joint enterprise with Developer. Neither party shall act as the agent of the other party in any respect hereunder. This Second Amendment is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

12. **California Law; Venue.** This Second Amendment and the DDA are governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and the City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum.

13. **Successors; No Third Party Beneficiaries.** The terms, covenants, agreements and conditions set forth in this Second Amendment shall bind and inure to the benefit of Port and Developer and, except as otherwise provided herein, their personal representatives and successors and assigns. This Second Amendment is made for the purpose of setting forth certain rights and obligations of Developer and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise.

Exhibit A: Legal Description for DDA

Exhibit B: DDA Exhibit B14, Phase 1 Public ROWs

Exhibit C: DDA Exhibit B15, Phase 1 Non-City ROW Facilities Maintenance Standards with Calendar Year 2024 Cost Budget

Exhibit D: DDA Exhibit D7, Master Association Conditions, Covenants, and Restrictions

[Signature Page Follows]

The parties enter into this Second Amendment as of the date first set forth above.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

By: _____

Name:

Title:

PORT:

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

By: _____

Elaine Forbes, Executive Director

Approved as to Form: DAVID CHIU, City Attorney

By: _____

A. Mathai-Jackson, Deputy City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

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 _____

On _____ before me, _____ personally
(insert name and title of the officer)
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 A

LEGAL DESCRIPTION FOR DDA

All that certain real property situated in the City and County of San Francisco, State of California identified on Final Transfer Map No. 9597, recorded on February 7, 2019 in Book HH of Survey Maps at Pages 89-98, inclusive in the Official Records of the City and County of San Francisco as Lots 2-3 inclusive; Lots 5-10 inclusive; Lots 12-22 inclusive; Lots B through G, inclusive; Lot I; and Lots K through BB inclusive.

APNs: 4111-009; 4052-008; 4112-001; 4112-002; 4112-003; 4113-002; 4113-003; 4114-005; 4114-007; 4052-009; 4116-008; 4052-010; 4052-011; 4116-009; 4115-003; 4117-002; 4117-003; 4052-012; 4115-004; 3941-042; 4052-002; 4052-003; 4052-004; 4111-005; 4114-001; 4111-006; 4113-001; 4111-007; 4114-002; 4114-003; 4114-004; 4052-005; 4052-006; 4052-007; 4116-001; 4116-002; 4116-003; 4116-004; 4116-005; 4116-006; 4115-001; 4115-002; 4117-001; 4116-007.

EXCEPTING THEREFROM, ALL SUBSURFACE MINERAL DEPOSITS, INCLUDING OIL AND GAS DEPOSITS, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS ON SAID LAND FOR EXPLORATION, DRILLING AND EXTRACTION OF SUCH. MINERAL, OIL AND GAS DEPOSITS, AS EXCEPTED AND RESERVED BY THE STATE OF CALIFORNIA IN THAT CERTAIN ACT OF THE LEGISLATURE (THE "BURTON ACT") SET FORTH IN CHAPTER 1333 OF THE STATUTES OF 1968 AND AMENDMENTS THERETO, AND UPON TERMS AND PROVISIONS SET FORTH THEREIN.

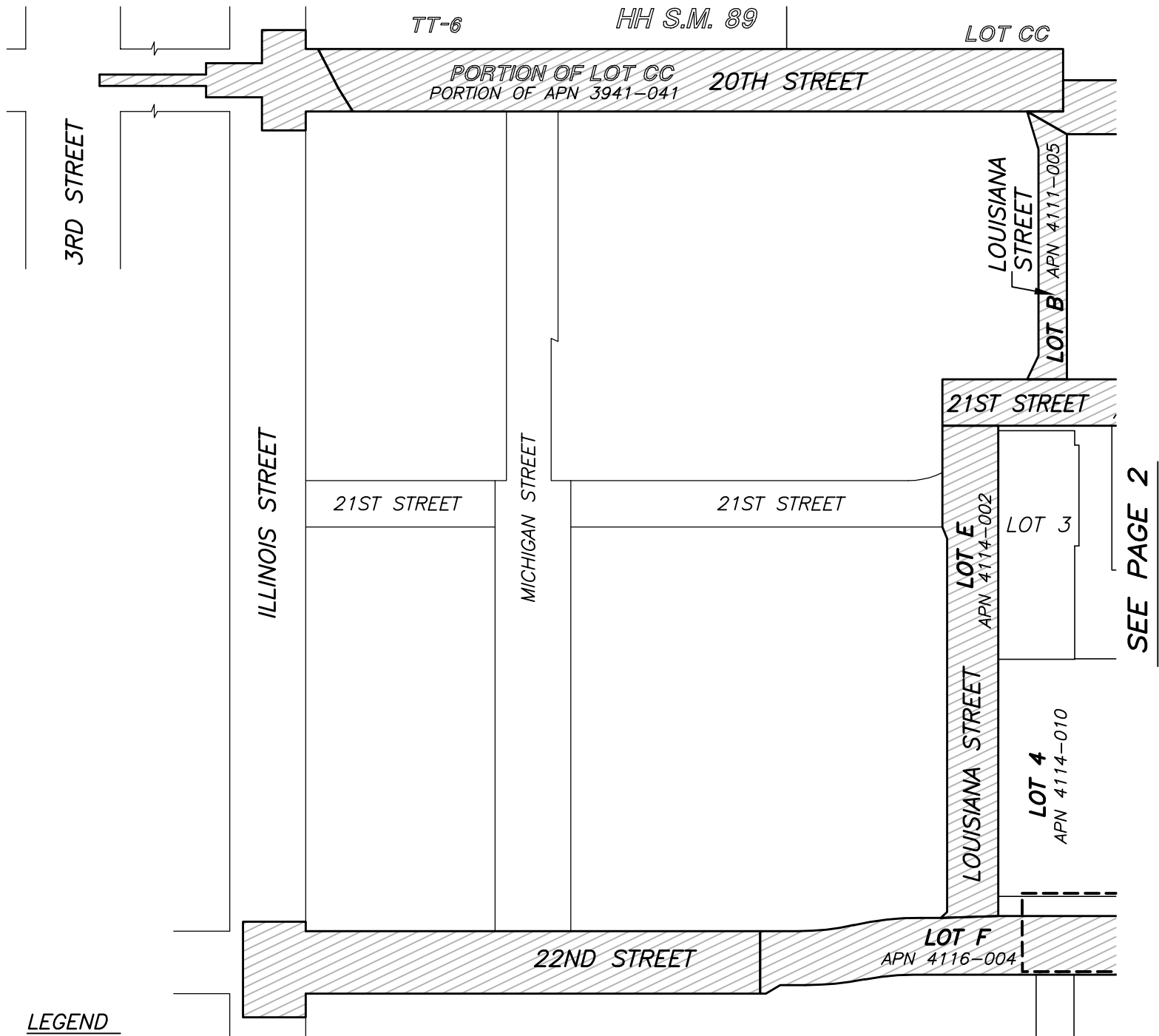
EXHIBIT B

DDA EXHIBIT B14

PHASE 1 PUBLIC ROWS

[attached]

PHASE 1 PUBLIC ROWS



LEGEND



Phase I Public ROWs

LOT CC

LOTS PER FINAL TRANSFER MAP 9597 RECORDED FEBRUARY 7, 2019 IN BOOK HH OF SURVEY MAPS, AT PAGES 89-98, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

LOT A

LOTS PER FINAL MAP 9585, RECORDED OCTOBER 23, 2020 IN BOOK 1 OF FINAL MAPS, PAGES 94-103, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.



OFFER OF IMPROVEMENTS

SAN FRANCISCO
CALIFORNIA

BY BG CHKD. BG DATE 01-08-24 SCALE 1"=150'±

PAGE 1 OF 2 JOB NO. S-9037

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

SEE PAGE 1



SAN FRANCISCO
CALIFORNIA

S-9037 PIER 70_OFFER OF IMPROVEMENTS.dwg

EXHIBIT C

DDA EXHIBIT B15

**PHASE 1 NON-CITY ROW FACILITIES MAINTENANCE STANDARDS WITH
CALENDAR YEAR 2024 COST BUDGET**

[to be inserted prior to execution]

EXHIBIT D

DDA EXHIBIT D7

MASTER ASSOCIATION CONDITIONS, COVENANTS, AND RESTRICTIONS

[to be inserted prior to execution]

SCHEDULE 15.10(d)
OFAC AND ANTI-BRIBERY PROVISIONS

1.1. *OFAC Compliance and Certification.*

(a) During the term of this [Contract], [Contractor] represents and certifies that [Contractor], or any of its partners, members, subsidiaries or affiliates, or any owner of a direct or indirect interest in [Contractor], nor any subcontractor or any other third party, nor any affiliate of such party: (i) is not a Sanctioned Party or listed on any Government Lists (defined below) or listed on any Government Lists (defined below); (ii) complies with all applicable Sanction Laws and shall not employ or do business with anyone who is a Sanctioned Party; (iii) maintains a bank account in the United States or Canada; (iv) is not a Person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Orders No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (defined below) or in any enabling legislation or other Presidential Executive Order in respect thereof; (v) has not been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (defined below); or (vi) is not currently under investigation by any governmental authority for alleged criminal activity.

(b) [Contractor] has complied and will continue to comply with all applicable trade restrictions and Sanction Laws and has not and will not employ or do business with anyone suspected of being connected with criminal or terrorist activities or who is the subject of any Sanction Law. [Contractor] represents that payments made to or from it in relation to the services provided would not result in a violation of any Sanction Law by [Contractor].

(c) For the purposes hereof, "Government Lists" means: (a) the Specially Designated Nationals and Blocked Persons Lists maintained by U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"); (b) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC; or (c) similar lists maintained by the U.S. Department of the Treasury, the U.S. Department of State, the U.S. Department of Commerce or any other governmental authority. For the purposes hereof, "Patriot Act Offense" means any violation of the Patriot Act or of the criminal Laws of the United States, or any of the several states relating to terrorism or the laundering of monetary instruments, including the Bank Secrecy Act and the Money Laundering Control Act of 1986. To the fullest extent permitted by Law, [Contractor] agrees to defend, indemnify and hold harmless Port from and against any and all claims, damages, losses, risks, liability and expenses (including reasonable Attorneys' Fees and Costs) arising from or related to any breach of the foregoing certification. [Contractor] shall explicitly include the obligations in this Section 22.19 in any contracts, subcontracts or agreements formed between [Contractor] and any Person to the extent that those contracts relate to fulfillment of [Contractor]'s obligations under this Agreement.

(d) The provisions of this Section 18 shall survive the final completion of the Project and the expiration or earlier termination of this Agreement.

(e) Terms used in this Section are defined as follows:

(i) "Sanctioned Party" means (i) any Person that is the target of any Sanction Laws, (ii) any Person that is directly or indirectly owned or controlled by any Person that is the target of any Sanction Laws or (iii) any Person that is located, organized or ordinarily resident in a country or territory that is the target of comprehensive sanctions (inclusive of Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, and Luhansk regions of Ukraine).

(ii) "Sanction Laws" means all laws, orders, ordinances, directions, rules, regulations and requirements of any governmental authority or of any public international

organization, or any agency, department, commission, board, bureau, instrumentality or political subdivision thereof, as may have jurisdiction over the parties, with respect to any type of economic, trade, financial, transactional or other type of sanction, ban or prohibition, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Department of State, the U.S. Department of Commerce, the United Nations Security Council, the European Union, the UK Government (including His Majesty's Treasury) and the Government of Canada.

1.2. *Anti-Bribery.* In consideration of entering into this Agreement, [Contractor] hereby acknowledges, certifies, warrants and undertakes to Port that:

(a) it has not offered, promised, given or agreed to give and shall not during the term of this Agreement offer, promise, give or agree to give to any Person any bribe on behalf of Port or otherwise with the object of obtaining a business advantage for the other Party or otherwise;

(b) it will not engage in any activity or practice which would constitute an offense under the United States Foreign Corrupt Practices Act of 1977;

(c) it has, and will maintain in place, its own policies and procedures to ensure compliance with the United States Foreign Corrupt Practices Act of 1977;

(d) it will ensure that any Person who performs services for or on its behalf in connection with this Agreement complies with the terms and conditions set forth in this Section 19;

(e) it has, and will maintain in place, effective accounting procedures and internal controls necessary to record all expenditures in connection with this Agreement, which enable Port to timely identify [Contractor]'s financial and related records in connection with this Agreement;

(f) from time to time during the term of this Agreement, at the reasonable request of Port, [Contractor] will confirm in writing that it has complied with its undertakings under this Section 22.20;

(g) [Contractor] shall notify Port as soon as practicable of any breach of any of the undertakings contained in this Section 22.20 of which it becomes aware.

(h) it shall explicitly include the obligations in this Section 22.20 in any contracts formed between [Contractor] and any Person to the extent that those contracts relate to [Contractor]'s fulfilment of its obligations under this Agreement.

(i) The provisions of this Section 22.20 shall survive the expiration or earlier termination of this [Contract] with respect to actions arising during the term hereof.