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San Francisco, CA 94102

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DEVELOPMENT AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

FC PIER 70, LLC, A DELAWARE LIMITED LIABILITY COMPANY

RELATING TO DEVELOPMENT OF CITY LAND

UNDER THE JURISDICTION OF

THE PORT COMMISSION OF SAN FRANCISCO

[Insert Reference Date]

Lodged with Board of Supervisors 10/12/17.

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TABLE OF CONTENTS

APPENDIX EXCERPT

EXHIBITS

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DEVELOPMENT AGREEMENT
(Pier 70 28-Acre Site)

This **DEVELOPMENT AGREEMENT** ("**Development Agreement**") is between the **CITY AND COUNTY OF SAN FRANCISCO**, a political subdivision and municipal corporation of the State of California (including its agencies and departments, the "**City**"), and **FC Pier 70, LLC**, a Delaware limited liability company ("**Developer**") (each, a "**Party**"), is dated as of the Reference Date, and is made in conjunction with that certain Disposition and Development Agreement (the "**DDA**") between the City, acting by and through the San Francisco Port Commission (the "**Port Commission**" or "**Port**"), and Developer. The DDA establishes the relative rights and obligations of the Port and Developer for the 28-Acre Site development project, some of which will be implemented as described in other Transaction Documents.

RECITALS

A. The City owns about 7 miles of tidelands and submerged lands along San Francisco Bay, including approximately 72 acres known as Pier 70 or Seawall Lot 349 under Port jurisdiction in the central waterfront area of San Francisco. Pier 70 is generally bounded by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east. The National Park Service listed approximately 66 acres of Pier 70 as the *Union Iron Works Historic District* in the National Register of Historic Places in 2014.

B. The City and Developer have negotiated this Development Agreement to vest in Developer and its successors certain entitlement rights with respect to the 28-Acre Site, the legal description of which is attached as **DA Exhibit A**.

C. The City has established a 35-acre Pier 70 Special Use District that includes the 28-Acre Site and adjacent parcels called the Illinois Street Parcels. Developer is the master developer for the 28-Acre Site and is responsible for subdividing and improving the 28-Acre Site and a portion of the Illinois Street Parcel known as Parcel K with Horizontal Improvements needed or desired to serve vertical development. Under the DDA, Developer has an Option to develop Vertical Improvements on designated Development Parcels known as Option Parcels. Horizontal and vertical development of the Project will be subject to the Project Requirements in the DDA, which include Regulatory Requirements.

D. The Development Agreement Statute authorizes local governments to enter into development agreements with persons having a legal or equitable interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development. In accordance with the Development Agreement Statute, the City adopted Chapter 56 to establish local procedures and requirements for development agreements. The Parties are entering into this Development Agreement in accordance with the Development Agreement Statute and Chapter 56. This Development Agreement is consistent with the requirements of section 65865.2 of the Development Agreement Statute, which requires a development agreement to state its duration, permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes.

E. The City and the Port have determined that the development of the Project in accordance with the DA Requirements will provide public benefits greater than the City and the Port could have obtained through application of pre-existing City ordinances, regulations, and policies. Public benefits include:

1. revitalizing a portion of the former industrial site that currently consists of asphalt lots and deteriorating buildings behind chain link fences that prevent open public access to the waterfront;

2. building a network of waterfront parks, playgrounds, and recreational facilities on the 28-Acre Site that, with development of the Illinois Street Parcels, will more than triple the amount of parks in the neighborhood;

3. creating significant amounts of on-site affordable housing units on the 28-Acre Site and Parcel K South;

4. restoring three deteriorating historic structures that are significant contributors to the historic district for reuse;

5. providing substantial new and renovated space for arts/cultural nonprofits, small-scale manufacturing, local retail, and neighborhood services;

6. preserving the artist community currently located in the Noonan Building in new state-of-the-art, on-site space that is affordable, functional, and aesthetically pleasing;

7. creating an estimated 10,000 permanent jobs and 11,000 temporary construction jobs and implementing a robust workforce commitment program to encourage local business participation;

8. investing over $200 million to build transportation and other infrastructure critical to serving the 28-Acre Site, the historic district, the historic ship repair operations, and the surrounding neighborhood; and

9. implementing sustainability measures to enhance livability, health and wellness, mobility and connectivity, climate protection, resource efficiency, and ecosystem stewardship and provide funding sources needed to protect the Pier 70 shoreline from sea level rise.

F. The Project Approvals listed on **DA Exhibit B** entitle Developer's proposed Project, and authorize Developer to proceed with development in accordance with the Project Requirements under the DDA, which include this Development Agreement. The Parties intend for all acts referred to in this Development Agreement to comply with CEQA, the CEQA Guidelines, and the CEQA Procedures (collectively, "**CEQA Laws**"), the Development Agreement Statute, Chapter 56, and the DA Ordinance (together, "**DA Laws**"), the Planning Code, and all other Applicable Laws in effect on the Reference Date. This Development Agreement does not limit either the City's obligation to comply with CEQA Laws before taking any further discretionary action regarding the 28-Acre Site or Developer's obligation to comply with all Applicable Laws in the development of the Project.

AGREEMENT

1. DEFINITIONS

1.1. Role of Appendix. The attached excerpt from the **Appendix** includes Part A (Standard Provisions and Rules of Interpretation) and is an integral part of this Development Agreement.

1.2. Definitions Used. The following terms have the meanings given to them below, are defined elsewhere in this Development Agreement as indicated, or are defined in the Appendix.

"**28-Acre Site**" means a portion of Pier 70 that is described in the legal description and site plan attached as **DA Exhibit A**.

"**28-Acre Site Affordable Housing Fee**" is defined in the AHP.

"**28-Acre Site CFD**" is defined in the Appendix.

"**28-Acre Site Jobs/Housing Equivalency Fee**" is defined in the Appendix and means the Impact Fee that Vertical Developers of office and other nonresidential uses will pay under **Subsection 5.4(b)** (Impact Fees and Exactions) in lieu of the Jobs/Housing Linkage Fee payable under Planning Code sections 413.1-413.11.

"**Project**" means the development of the 28-Acre Site in accordance with the DA Requirements.

"**AB 418**" is defined in the Appendix.

"**Acquiring Agencies**" is defined in the Appendix.

"**Acquisition Agreement**" means the Acquisition and Reimbursement Agreement between Developer and the Port in the form of *FP Exh A.*

"**Adequate Security**" is defined in the Appendix.

"**Administrative Fee**" is defined in the Appendix and means: (i) a City fee imposed citywide (or portwide, for Port fees) in effect and payable when a developer submits an application for any permit or approval, intended to cover only the estimated actual costs to the City or the Port of processing the application, addressing any related hearings or other actions, and inspecting work under the permit or approval; and (ii) amounts that Developer or a Vertical Developer must pay to the City or the Port under any Transaction Document to reimburse the City or the Port for its administrative costs in processing applications for any permits or approvals required under the DA Requirements.

*"**Administrative Fee" excludes** any Impact Fee or Exaction and Other City Costs subject to reimbursement under the DDA.*

"**Affordable Housing Developer**" is defined in the AHP.

"**Affordable Housing Parcel**" as defined in the AHP means a Development Parcel for which Developer must construct all necessary Horizontal Improvements needed for development in accordance with the AHP.

"**Affordable Housing Plan**" means *DDA Exh B3*.

"**Affordable Housing Project**" as defined in the AHP means the building that an affordable housing developer builds on an Affordable Housing Parcel in accordance with the AHP.

"**Agent**" is defined in the Appendix.

"**Aggrieved Party**" is defined in the Appendix and means the Party alleging that a Breaching Party has committed an Event of Default or is in Material Breach under the terms of this Development Agreement.

"**AHP**" is an acronym for the Affordable Housing Plan.

"**AHP Housing Area**" is defined in the AHP.

"**Annual Review**" is defined in **Subsection 8.1(a)** (Statutory Provision).

"**Annual Review Date**" is defined in **Subsection 8.1(c)** (Planning Director's Discretion).

"**Appendix**" means the Appendix to Transaction Documents for the Pier 70 Mixed-Use Project, consisting of Appendix Part A: Standard Provisions and Rules of Interpretation; Part B: Glossary of Defined Terms; and Part C: Index to Other Defined Terms.

"**Appendix G-2**," "**Appendix G-3**," and "**Appendix G-4**" are defined in the Appendix.

"**Applicable Law**" is defined in the Appendix and means, individually or collectively, any law that applies to development, use, or occupancy of or conditions at the FC Project Area.

"**Applicable Lender Protections**" means provisions under *DDA art. 19 (Lender Rights)*, *VDDA art. 15 (Financing; Rights of Lenders)*, and *Parcel Lease art. XXXIX (Mortgages)*

that protect the rights of Lenders making loans to Borrowers to finance Improvements at the FC Project Area.

"**Applicable Port Laws**" is defined in the Appendix and means the Burton Act as amended by AB 418, the statutory trust imposed by the Burton Act, Charter Appendix B, and the common law public trust for navigation, commerce, and fisheries.

"**Assessor**" is defined in the Appendix.

"**Assignment and Assumption Agreement**" means an Assignment and Assumption Agreement in the form of *DDA Exh D10* or *VDDA Exh [XXXX]*.

"**Associated Public Benefits**" means the Developer Construction Obligations identified as Associated Public Benefits in the Schedule of Performance attached to the DDA as *DDA Exh B2*, some of which are also described in **Section 4.1** (Public Benefits).

"**AWSS**" is defined in the Appendix.

"**BMR Credit**" is defined in the AHP.

"**BMR Unit**" is defined in the AHP.

"**Bonds**" is defined in in the Appendix.

"**Borrower**" is defined in the Appendix.

"**Breaching Party**" is defined in the Appendix and means a Party alleged to have committed an Event of Default under this Development Agreement.

"**Burton Act**" is defined in the Appendix.

"**CEQA**" is an acronym for the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000-21189.3).

"**CEQA Findings**" means findings adopted by the Planning Commission, the Port Commission, and the Board of Supervisors under CEQA Laws.

"**CEQA Guidelines**" means the California Guidelines for Implementation of CEQA (Cal. Admin. Code §§ 15000-15387).

"**CEQA Laws**" is defined in the Appendix and is repeated in **Recital F**.

"**CEQA Procedures**" means Administrative Code chapter 31.

"**CFD**" is defined in the Appendix.

"**CFD Agent**" is defined in the Appendix.

"**Change to Existing City Laws and Standards**" means any change to Existing City Laws and Standards or other laws, plans, or policies adopted by the City or the Port or by voter initiative after the Reference Date that would conflict with the Project Approvals, the Transaction Documents, or Applicable Port Laws as specified in **Section 5.3** (Changes to Existing City Laws and Standards).

*"**Change to Existing City Laws and Standards**" **excludes** regulations, plans, and policies that change only procedural requirements of Existing City Laws and Standards.*

"**Chapter 56**" means Administrative Code chapter 56, which the Board of Supervisors adopted under the Development Agreement Statute.

"**Chief Harbor Engineer**" is defined in the Appendix.

"**City**" is defined in the Appendix, subject to **Subsection 2.4(b)** (Port Obligations) for the purposes of this Development Agreement.

"**City Agency**" is defined in the Appendix and means any public body or an individual authorized to act on behalf of the City in its municipal capacity, including the Board of Supervisors or any City commission, department, bureau, division, office, or other subdivision, and officials and staff to whom authority is delegated, on matters within the City Agency's jurisdiction.

"**City Charter**" is defined in the Appendix.

"**City Law**" is defined in the Appendix and means any City ordinance or Port code provision and implementing regulations and policies governing zoning, subdivisions and subdivision design, land use, rate of development, density, building size, public improvements and dedications, construction standards, new construction and use, design standards, permit restrictions, development impacts, terms and conditions of occupancy, and environmental guidelines or review at the FC Project Area, including, as applicable: (i) the Waterfront Plan and the Design for Development; (ii) the Construction Codes, applicable provisions of the Planning Code, including section 249.79 and the City's zoning maps, the Subdivision Code, and the General Plan; (iii) local Environmental Laws and the Health Code; and (iv) the Other City Requirements.

"**City Party**" is defined in the Appendix.

"**citywide**" is defined in the Appendix and means all real property within the territorial limits of San Francisco, not including any property owned or controlled by the United States or the State that is exempt from City Laws.

"**Claim**" is defined in the Appendix and means a demand made in an action or in anticipation of an action for money, mandamus, or any other relief available at law or in equity for a Loss arising directly or indirectly from acts or omissions occurring in relation to the Project or at the FC Project Area during the DA Term.

*"**Claim**" **excludes** any demand made to an insurer under an insurance policy.*

"**Component**" is defined in the Appendix and means a discrete portion or phase of a Horizontal Improvement where the Horizontal Improvement has an estimated construction cost over $1 million.

"**Consent**" is defined in in the Appendix.

"**Construction Codes**" is defined in the Appendix and means the Port Building Code and all Municipal Codes regulating construction of Vertical Improvements, including the International Building Code, the California Building Code, and other uniform construction codes to the extent incorporated and as modified by the Port Commission or the Board of Supervisors.

"**Construction Document**" is defined in the Appendix and means any Improvement Plan or Master Utility Plan submitted to the Port or City in accordance with the ICA for Horizontal Improvements.

"**Construction Permit**" is defined in the Appendix

"**Current Phase**" is defined in the Appendix and means the Phase of the Project during which an event or determination occurs.

"**DA Assignment**" is defined in **Section 10.1** (DA Successors' Rights).

"**DA Laws**" is defined in **Recital F**.

"**DA Ordinance**" means Ordinance No. XXXX adopting this Development Agreement, incorporating by reference CEQA findings, General Plan Consistency Findings, and public trust findings, and authorizing the Planning Director to execute this Development Agreement on behalf of the City.

"**DA Requirements**" is defined in **Subsection 5.2(a)** (Agreement to Follow).

"**DA Successor**" is defined in **Section 10.1** (DA Successors' Rights).

"**DA Term**" is defined in **Section 2.2** (DA Term).

"**Deferred Infrastructure**" is defined in the Appendix and means Horizontal Improvements, primarily consisting of Utility Infrastructure, Public ROWs, and other Improvements installed between the edge of a Public ROW and the boundary of a Development Parcel, such as sidewalks and curb cuts, street lights, furnishing, and landscaping, and utility boxes and laterals serving the parcel, that Vertical Developers in a Current Phase will be required to construct under their Vertical DDA.

*"**Deferred Infrastructure**" **excludes** utility improvements and fixtures customarily installed as part of a Vertical Improvement.*

"**Design for Development**" means the Pier 70 Design for Development as approved by the Port Commission and the Planning Commission.

"**Developer Construction Obligations**" is defined in the Appendix.

"**Developer Mitigation Measure**" is defined in the Appendix and means any Mitigation Measure in the Mitigation Monitoring and Reporting Program attached to the DDA as *DDA Exh B10* that is to be performed by Developer or a Vertical Developer or that is otherwise identified as the responsibility of the "owner" or the "project sponsor."

"**Development Agreement**" means this Development Agreement.

"**Development Agreement Statute**" means California Government Code sections 65864-65869.5.

"**Development Parcel**" is defined in the Appendix and means a buildable parcel in the SUD and includes each Option Parcel.

"**Director of Public Works**" is defined in in the Appendix.

"**Director of Transportation**" is defined in the Appendix.

"**Environmental Laws**" is defined in in the Appendix.

"**Environmental Regulatory Agency**" is defined in the Appendix.

"**Event of Default**" is defined in **Section 9.2** (Events of Default).

"**Exaction**" is defined in the Appendix and means any requirement to provide services or dedicate land or Improvements that the City imposes as a condition of approval to mitigate the impacts of increased demand for public services, facilities, or housing caused by a development project, which may or may not be an impact fee governed by the Mitigation Fee Act, including a fee paid in lieu of complying with a City requirement.

*"**Exaction**" **excludes** Mitigation Measures and any federal, state, or regional impositions.*

"**Excusable Delay**" is defined in the Appendix.

"**Existing City Laws and Standards**" is defined in **Subsection 5.2(a)** (Agreement to Follow).

"**FC Project Area**" is defined in the Appendix.

"**Federal or State Law Exception**" is defined in **Subsection 5.6(a)** (City's Exceptions).

"**Final EIR**" is defined in the Appendix and means the environmental impact report for the Project that the Planning Department published on [date], together with the Comments and Responses document, [add specifics of approval].

"**Final Map**" is defined in the Appendix and means a final Subdivision Map meeting the requirements of the Subdivision Code and the Map Act.

"**Financing Documents**" is defined in the Appendix.

"**Financing Plan**" means *DDA Exh C1*.

"**First Construction Document**" means the first building permit, site permit, or addendum issued for a Vertical Improvement that authorizes its construction.

*"**First Construction Document**" **excludes** permits or addenda for demolition, grading, shoring, pile driving, or other site preparation work.*

"**FP**" is an acronym for the Financing Plan.

"**Future Approval**" means any Regulatory Approval required after the Reference Date to implement the FC Project Area Project or begin Site Preparation or construction of Improvements.

"**General Plan Consistency Findings**" means findings made in Motion No. XXXX by the Planning Commission [Add specifics if necessary to conform to motion] that the Project as a whole and in its entirety is consistent with the objectives, policies, general land uses, and programs specified in the General Plan and the planning principles in Planning Code section 101.1.

"**gsf**" is an acronym for gross square feet in any structure, as measured under applicable provisions of the Design for Development.

"**Historic Building**" is defined in the Appendix and means any one of the historic structures in the 28-Acre Site known as Building 2, Building 12, and Building 21, each of which is classified as a significant contributing historic resource to the Union Iron Works Historic District.

"**horizontal development**" is defined in the Appendix.

"**Horizontal Improvements**" means public capital facilities and infrastructure built or installed in or to serve the FC Project Acre, including Site Preparation, Shoreline Improvements, Public Spaces, Public ROWs, and Utility Infrastructure, but excluding Vertical Improvements, all as defined in the Appendix.

"**Housing Tax Increment**" is defined in the Appendix.

"**ICA**" is an acronym for "interagency cooperation agreement" that refers to the Memorandum of Understanding (Interagency Cooperation), an interagency agreement between the Port and the City, through the Mayor, the Controller, the City Administrator, and the Director of Public Works, with the Consents of SFMTA SFPUC, and SFFD, establishing procedures for interagency cooperation in City Agency review of Construction Documents, inspection of Horizontal Improvements, and related matters, as authorized by Port Resolution No. [XXXX] and the MOU Resolution under Charter section B7.320.

"**IFD Agent**" is defined in the Appendix.

"**Illinois Street Parcel**" is defined in the Appendix.

"**Impact Fee**" means any fee that the City imposes as a condition of approval to mitigate the impacts of increased demand for public services, facilities, or housing caused by the development project that may or may not be an impact fee governed by the Mitigation Fee Act, including any in-lieu fee.

*"**Impact Fee**" **excludes** any Administrative Fee, school district fee, or federal, state, or regional fee, tax, special tax, or assessment.*

"**Improvement**" is defined in the Appendix and means any physical change required or permitted to be made to the FC Project Area under the DDA, including Horizontal Improvements and Vertical Improvements.

"**Improvement Plan**" is defined in the Appendix and means any improvement and engineering plan meeting applicable City and Port specifications for the applicable Horizontal Improvements approved by the Port in accordance with the ICA.

"**Inclusionary Unit**" is defined in the AHP.

"**Index**" means the Construction Cost Index, San Francisco, published monthly by Engineering News-Record or replacement index as agreed by the Parties.

"**Indexed**" means the product of a cost estimate or actual cost that Developer established for Vertical Improvements or any Component of Horizontal Improvements in a Prior Phase, multiplied by the percentage of any increase between the Index published in the month in which the earlier actual cost or cost estimate was established and the Index published in the month in which Developer claims a Material Cost Increase.

"**Infrastructure Plan**" is defined in the Appendix and means the Infrastructure Plan attached to the DDA as *DDA Exh B8*, including the Streetscape Master Plan and each Master Utility Plan when approved by the applicable City Agency.

"**in-lieu fee**" is defined in the Appendix and means a fee a developer may pay instead of an Impact Fee or complying with an Exaction.

"**Insolvency**" is defined in the Appendix and means a person's financial condition that results in any of the following:

(i) a receiver is appointed for some or all of the person's assets;

(ii) the person files a petition for bankruptcy or makes a general assignment for the benefit of its creditors;

(iii) a court issues a writ of execution or attachment or any similar process is issued or levied against any of the person's property or assets; or

(iv) any other action is taken by or against the person under any bankruptcy, reorganization, moratorium or other debtor relief law.

"**Interested Person**" is defined in the Appendix and means a person that acquires a property interest or security interest in any portion of the 28-Acre Site by Vertical DDA, Parcel Lease, Assignment and Assumption Agreement, or Mortgage.

"**IRFD**" is defined in the Appendix.

"**IRFD Agent**" is defined in the Appendix.

"**IFD Financing Plan**" is defined in the Appendix.

"**LBE**" is defined in the Appendix.

"**Lender**" is defined in the Appendix and used in the Applicable Lender Protections.

"**Losses**" is defined in the Appendix and means, when used in reference to a Claim, any personal injury, property damage, or other loss, liability, actual damages, compensation, contribution, cost recovery, lien, obligation, interest, injury, penalty, fine, action, judgment, award, or costs (including reasonable attorneys' fees), or reasonable costs to satisfy a final judgment of any kind, known or unknown, contingent or otherwise, except to the extent specified in the DDA.

"**Map Act**" is defined in in the Appendix.

"**Market-Rate Condo Project**" is defined in the Appendix.

"**Market-Rate Rental Project**" is defined in the Appendix.

"**Master Lease**" is defined in the Appendix and means an interim lease for most of the FC Project Area in the form of *DDA Exh D2* that will allow Developer to take possession of the premises and construct Horizontal Improvements approved under the DDA.

"**Master Lease Premises**" means the portions of the 28-Acre Site subject to the Master Lease.

"**Master Utility Plan**" is defined in in the Appendix.

"**Material Breach**" means the occurrence of any of the events described in *DDA art. 12 (Material Breaches and Termination).*

"**Material Change**" means any circumstance that would create a conflict between a Change to Existing City Laws and Standards and the Project Approvals that is described in **Subsection 5.3(b)** (Circumstances Causing Conflict).

"**Material Cost Increase**" means a material cost increase in the costs of Vertical Improvements or any Component of Horizontal Improvements, as applicable.

"**Material Modification**" is defined in in the Appendix

"**Mello-Roos Taxes**" is defined in in the Appendix.

"**Mitigation Fee Act**" means provisions of chapter 5, division 1, title 7 of the California Government Code beginning with section 66000, as described in section 66000.5.

"**Mitigation Measure**" is defined in in the Appendix.

"**MMRP**" is an acronym for the Mitigation Monitoring and Reporting Program that Planning Commission adopted by Resolution No. [XXXX].

"**MOHCD**" is an acronym for the Mayor's Office of Housing and Community Development.

"**Mortgage**" is defined in the Appendix and used in the Applicable Lender Protections.

"**MOU Resolution**" is defined in the Appendix.

"**Noonan Building**" is defined in the Appendix.

"**Obligor**" is defined in the Appendix and means the person contractually obligated to perform under any form of Adequate Security provided under *DDA art. 17 (Security for Project Activities).*

"**Official Records**" is defined in the Appendix and means official real estate records that the Assessor records and maintains.

"**OLSE**" is defined in the Appendix.

"**Option Parcel**" is defined in the Appendix and means a Development Parcel for which Developer has an Option under *DDA art. 7 (Parcel Conveyances).*

"**Other City Agencies**" is defined in the Appendix and means a City Agency other than the Port.

"**Other City Costs**" is defined in the Appendix and means costs that Other City Agencies incur to perform their obligations under the ICA, the Development Agreement, and the Tax Allocation MOU to implement or defend actions arising from the Project, including staff costs determined on a time and materials basis, third-party consultant fees, attorneys' fees, and costs to administer the financing districts to the extent not paid by Public Financing Sources.

*"**Other City Costs**" **excludes** Port Costs, Administrative Fees, Impact Fees, and Exactions.*

"**Other City Requirements**" means *DDA Exh E1*.

"**Other Regulator**" is defined in the Appendix and means a federal, state, or regional body, administrative agency, commission, court, or other governmental or quasi-governmental organization with regulatory authority over Port land, including any Environmental Regulatory Agency.

*"**Other Regulator**" **excludes** all City Agencies.*

"**Parcel K**" is defined in the Appendix.

"**Parcel K North**" is defined in the Appendix.

"**Parcel K South**" is defined in the Appendix.

"**Parcel Lease**" is defined in the Appendix and means a contract in the form of *DDA Exh D4* by which the Port will convey a leasehold interest in an Option Parcel to a Vertical Developer.

"**PDR**" is defined in the Appendix.

"**Phase**" is defined in the Appendix and means one of the integrated stages of horizontal and vertical development for the FC Project Area as shown in the Phasing Plan, as may be revised from time to time in accordance with *DDA art. 3 (Phase Approval).*

"**Phase Approval**" is defined in the Appendix and means approval by the Port of a Phase Submittal under *DDA art. 3 (Phase Approval).*

"**Phase Area**" is defined in the Appendix and means the Development Parcels and other land at the FC Project Area that are to be developed in a Phase.

"**Phase Improvements**" is defined in the Appendix and means Horizontal Improvements that are to be constructed under a Phase Approval.

"**Phase Submittal**" is defined in the Appendix and means Developer's application for Port Commission approval of a proposed Phase under *DDA art. 3 (Phase Approval).*

"**Phasing Plan**" is defined in the Appendix and means *DDA Exh B1*, which shows the order of development of the Phases and the Development Parcels in each Phase Area, subject to revision under *DDA art. 3 (Phase Approval).*

"**Pier 70 TDM Program**" is defined in **Subsection 4.1(c)** (Specific Benefits).

"**Planning**" is defined in the Appendix and means the San Francisco Planning Commission, acting by motion or resolution or by delegation of its authority to the Planning Department and the Planning Director.

"**Planning Director**" is defined in the Appendix.

"**Port**" and "**Port Commission**" are defined in the Appendix.

"**Port Consent**" means the Consent of the Port Commission of the City and County of San Francisco that is attached to and incorporated in this Development Agreement.

"**Port Director**" is defined in the Appendix.

"**portwide**" is defined in the Appendix and means any matter relating to all real property under the jurisdiction of the Port Commission.

"**Prior Phase**" is defined in the Appendix and means the Phase or Phases for which Developer obtained Phase Approval before any Current Phase.

"**Project**" is defined in the Appendix and means the Project.

"**Project Approval**" is defined in the Appendix and means a Regulatory Approval by a City Agency that is necessary to entitle the Project and grant Developer a vested right to begin Site Preparation and construction of Horizontal Improvements, including those listed in

DA Exhibit B and includes Future Approvals in accordance with **Subsection 5.1(d)** (Future Approvals).

"**Project Payment Obligation**" is defined in the Appendix.

"**Project Requirements**" is defined in the Appendix.

"**Prop M**" means Planning Code sections 320-325, which implement Proposition M, adopted in November 1986.

"**Public Financing Sources**" is defined in the Appendix.

"**Public Health and Safety Exception**" is defined in **Subsection 5.6(a)** (City's Exceptions).

"**Public ROWs**" is defined in the Appendix and means Horizontal Improvements consisting of public streets, sidewalks, shared public ways, bicycle lanes, and other paths of travel, associated landscaping and furnishings, and related amenities.

"**Public Spaces**" is defined in the Appendix.

"**public trust**" is defined in in the Appendix.

"**Reference Date**" means the date stated on the title page, which is the date that the Board of Supervisors last took actions to approve and entitle the Project.

"**Regulatory Agency**" is defined in the Appendix and means a City Agency or Other Regulator with jurisdiction over any aspect of land in the SUD.

"**Regulatory Approval**" is defined in the Appendix and means any motion, resolution, ordinance, permit, approval, license, registration, utility services agreement, Final Map, or other action, agreement, or entitlement required or issued by any Regulatory Agency, as finally approved.

"**Regulatory Requirements**" is defined in the Appendix.

"**Requested Change Notice**" means Developer's notice to the Port requesting changes to the Phasing Plan under *DDA § 3.9 (Changes to Project after Phase 1).*

"**RMA**" is defined in the Appendix.

"**Schedule of Performance**" means the Schedule of Performance attached to the DDA as *DDA Exh B2*.

"**Section 1.126**" is defined in **Subsection 13.6(a)** (Application).

"**Section 169**" means Planning Code sections 169-169.6, which sets forth requirements of the TDM Program and requires new projects subject to its requirements to incorporate design features, incentives, and tools to encourage new residents, tenants, employees, and visitors to travel by sustainable transportation modes.

"**Section 409**" means Planning Code section 409, which establishes citywide reporting requirements for Impact Fees and timing and mechanisms for annual adjustments to Impact Fees.

"**Services CFD**" is defined in the Appendix.

"**Services Special Taxes**" is defined in the Appendix.

"**SFFD**" is an acronym for the San Francisco Fire Department.

"**SFMTA**" is an acronym for the San Francisco Municipal Transportation Agency.

"**SFMTA Consent**" means the Consent of the Municipal Transportation Agency of the City and County of San Francisco that is attached to and incorporated in this Development Agreement.

"**SFPUC**" is an acronym for the San Francisco Public Utilities Commission.

"**SFPUC Consent**" means the Consent of the Public Utilities Commission of the City and County of San Francisco that is attached to and incorporated in this Development Agreement.

"**SFPUC General Manager**" is defined in the Appendix.

"**SFPUC Wastewater Capacity Charge**" means the wastewater capacity charge and connection charge imposed by the SFPUC.

"**SFPUC Water Capacity Charge**" means the water capacity charge and connection charge imposed by the SFPUC.

"**Shoreline Improvements**" is defined in the Appendix.

"**Site Preparation**" is defined in the Appendix and means physical work to prepare and secure the FC Project Area for installation and construction of Horizontal Improvements, such as demolition or relocation of existing structures, excavation and removal of contaminated soils, fill, grading, soil compaction and stabilization, and construction fencing and other security measures and delivery of the Affordable Housing Parcels, as required.

"**State**" is defined in the Appendix.

"**Streetscape Master Plan**" is defined in the Appendix and means the master plan for Public ROW Improvements in the FC Project Area to be submitted by Developer and approved by applicable City Agencies in accordance with the DDA.

"**Subdivision Map**" is defined in the Appendix and means any map that Developer submits for the FC Project Area under the Map Act and the Subdivision Code.

"**Sub-Project Area**" is defined in the Appendix.

"**successor**" is defined in the Appendix and means heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring any portion of or any interest in the FC Project Area, whether by sale, operation of law, or in any other manner.

"**Successor Default**" is defined in **Subsection 10.2(e)** (No Cross-Default).

"**Successor by Foreclosure**" means any person who obtains title to all or any portion of or any interest in the FC Project Area as a result of foreclosure proceedings, conveyance or other action in lieu of foreclosure, or other remedial action, including: (i) any other person who obtains title to all or any portion of or any interest in the FC Project Area from or through a Lender; and (ii) any other purchaser at a foreclosure sale.

"**SUD**" is an acronym used to refer to the Pier 70 Special Use District created by Planning Code section 249.79 and related zoning maps setting forth zoning and other land use limitations for the 28-Acre Site.

"**Sustainability Plan**" refers to the Sustainability Plan presented to the Port Commission on September 12, 2017, a copy of which is on file with the Secretary of the Port Commission.

"**Tax Allocation MOU**" is a term for the Memorandum of Understanding (Assessment, Levy, and Allocation of Taxes).

"**Tax Increment**" is defined in in the Appendix.

"**TDM Program**" means the City's Transportation Demand Management Program, which is described in Section 169.

"**Tentative Map**" is defined in the Appendix and means a Tentative Transfer Map, Vesting Tentative Transfer Map, Tentative Map, or Vesting Tentative Map as defined in the Subdivision Code.

"**Termination Date**" is defined in the Appendix and means the date on which a termination under *DDA art. 12 (Material Breaches and Termination)* becomes effective.

"**Third-Party Challenge**" is defined in the Appendix and means an action challenging the validity of any provision of the DDA or the Development Agreement, the Project, any Project Approval or Future Approval, the adoption or certification of the Final EIR, other actions taken under CEQA, or any other Project Approval.

"**Total Fee Amount**" is defined in the Appendix.

"**Transaction Documents**" is defined in the Appendix.

"**Transfer**" is defined in the Appendix.

"**Transferee**" is defined in the Appendix.

"**Transportation Fee**" is defined in **Subsection 4.1(c)** (Specific Benefits).

"**Transportation Impact Study**" is defined in the TDM Program.

"**Transportation Plan**" refers to *DDA Exh B5*.

"**Treasurer-Tax Collector**" is defined in the Appendix.

"**Utility Infrastructure**" means Horizontal Improvements for utilities serving the FC Project Area that will be under SFPUC or Port jurisdiction when accepted.

*"**Utility Infrastructure" excludes** telecommunications infrastructure and any privately-owned utility improvements, including a proposed blackwater plant at the 28-Acre Site.*

"**Utility-Related Mitigation Measure**" is defined in the Appendix.

"**Vertical DDA**" is defined in the Appendix and means a Vertical Disposition and Development Agreement between the Port and a Vertical Developer, substantially in the form attached to the DDA as *DDA Exh D3.*

"**Vertical Developer**" is defined in the Appendix and means a person that acquires a Development Parcel from the Port under a Vertical DDA for the development of Vertical Improvements.

"**vertical development**" is defined in the Appendix.

"**Vertical Improvement**" is defined in the Appendix and means a new building that is built or a Historic Building that is rehabilitated at the 28-Acre Site.

"**Vested Elements**" is defined in **Subsection 5.1(b)** (Vested Elements).

"**VDDA**" is an acronym for Vertical DDA.

"**Waterfront Plan**" is defined in the Appendix.

"**Workforce Development Plan**" refers to *DDA Exh B4.*

2. CERTAIN TERMS

2.1. Effective Date. Pursuant to Administrative Code section 56.14(f), this Development Agreement will be effective on the later of: (a) the date that the Parties fully execute and deliver their respective counterparts to each other; and (b) the date the DA Ordinance is effective and operative (the "**Reference Date**"). When the Reference Date has

been determined, the City will provide Developer with a substitute title page that specifies the date.

2.2. DA Term. The term of this Development Agreement will begin on the Reference Date and continue separately for horizontal development and vertical development as described in this Section (the "**DA Term**").

(a) Horizontal Development.

(i) If the DDA Term is extended, expires, or is terminated as to a portion of a Phase, the Project, or the Project Site, the DA Term will be extended, expire, or terminate as to the same portion of the Phase, the Project, or the Project Site automatically, without any action of the Parties.

(ii) When the DDA Term expires or is terminated as to the entire Project and Project Site, the DA Term will expire or terminate automatically, without any action of the Parties.

(b) Vertical Development. When a Vertical DDA is extended, expires, or is terminated as to a Development Parcel, the DA Term will be extended, expire, or terminate as to the Development Parcel automatically, without any action of the Parties.

2.3. Relationship to DDA.

(a) DDA Parameters. The Board of Supervisors has approved this Development Agreement in conjunction with its approval of the DDA, other Transaction Documents, and Project Approvals to entitle the Project and granted other Project Approvals as described in **DA Exhibit B**. The DDA is the overarching Transaction Document for the development of the Project, which cannot proceed independently of the DDA. This Development Agreement is a Transaction Document under the DDA, and is intended to be included in all references to the Transaction Documents.

(b) DDA Requirements. This Development Agreement incorporates by reference certain public benefits that Developer is required to provide and obligations that Developer is required to perform. as more fully described in the DDA and outlined in **Section 4.1** (Public Benefits).

2.4. Roles of City and Port. Developer acknowledges the following.

(a) City Obligations. The City will undertake its obligations under this Development Agreement through the Planning Director or, as necessary under Chapter 56, the Planning Commission or the Board of Supervisors.

(b) Port Obligations. References in this Development Agreement to obligations of the "City" include the Port and Other City Agencies unless explicitly and unambiguously stated otherwise. References to both the City and the Port are intended to emphasize the Port's jurisdiction under Applicable Port Laws.

2.5. Recordation and Effect.

(a) Recordation. The Clerk of the Board of Supervisors will have this Development Agreement and any amendment to this Development Agreement recorded in the Official Records within 10 days after receiving fully executed and acknowledged original documents in compliance with section 65868.5 of the Development Agreement Statute and Administrative Code section 56.16.

(b) Binding Covenants. Pursuant to section 65868.5 of the Development Agreement Statute, from and after recordation of this Development Agreement, this Development Agreement will be binding on the Parties and, subject to **Section 10.2** (Effect of Assignment), their respective successors. Subject to the limitations on Transfers in **Section 10.2** (Effect of Assignment), all provisions of this Development

Agreement will be enforceable during the DA Term as equitable servitudes and will be covenants and benefits running with the land pursuant to Applicable Law, including California Civil Code section 1468.

(c) Constructive Notice. This Development Agreement, when recorded, gives constructive notice to every person. Recordation will cause it to be binding in its entirety on, and burden and benefit, any Interested Person to the extent of its interest in the FC Project Area.

(d) Nondischargeable Obligations. Obligations under this Development Agreement are not dischargeable in Insolvency.

2.6. Relationship to Project.

(a) Planning as Regulator. This Development Agreement relates to Planning's regulatory role with respect to development of the 28-Acre Site and implementation of the Project under the DDA in accordance with the SUD.

(b) Other City Agencies. The Board of Supervisors contemporaneously approved interagency Transaction Documents for the Project that describe the roles of the Port and Other City Agencies with respect to the Project.

(i) The ICA between the Port and the City describes the process for City Agency review and approval of Improvement Plans, Subdivision Maps, and other documents, primarily in relation to horizontal development.

(ii) In the Tax Allocation MOU, the City, through the Assessor, the Treasurer-Tax Collector, and the Controller, agrees to assist the Port in implementing the public financing for the FC Project Area.

(c) Port as Regulator. The Port in its regulatory capacity will:

(i) issue all Construction Permits, certificates of occupancy, and certificates of completion;

(ii) coordinate Other City Agency review of Improvement Plans and Subdivision Maps for the FC Project Area in accordance with the Infrastructure Plan and the ICA; and

(iii) monitor Developer's compliance with Applicable Laws in coordination with Other City Agencies.

(d) Port as Fiduciary. The City has appointed the Port to act in a fiduciary capacity as the IFD Agent and the IRFD Agent responsible for implementing Appendix G-2, the RMAs, and the IRFD Financing Plan, respectively, and has agreed to appoint the Port to act in a fiduciary capacity as the CFD Agent responsible for implementing the RMAs in the formation proceedings for the CFDs. In doing so, the City agreed to take actions at the Port's request to comply with the Financing Plan attached to the DDA as *DDA Exh C1*.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1. Project.

(a) Vested Right to Develop. Developer will have the vested right to develop the Project in accordance with and subject to this Development Agreement and the DDA.

(b) Future Approvals. The City, excluding the Port, will consider and process all Future Approvals for the development of the Project in accordance with and subject to this Development Agreement and the ICA. The Port's Future Approvals will be governed by this Development Agreement, the ICA, and the DDA.

(c) Project Approvals. The Parties acknowledge that Developer:

(i) has obtained all Project Approvals from the City required to begin construction of the Project, other than any required Future Approvals; and

(ii) may proceed in accordance with this Development Agreement and the DDA with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to obtaining any required Future Approvals.

3.2. Timing of Development. The DDA permits the development of the FC Project Area in Phases. The Phasing Plan and Schedule of Performance, respectively, each as modified from time to time in accordance with the DDA, will govern the construction phasing and timing of the Project. The time for performance of obligations under this Development Agreement will be coordinated with the DDA and the Vertical DDAs, each as extended to the extent permitted under their respective performance schedules.

3.3. Horizontal Improvements Dedicated for Public Use. Development of the FC Project Area requires Horizontal Improvements to support the development and operation of all Development Parcels, including any Affordable Housing Parcel designated in accordance with the AHP, whether located in or outside of the 28-Acre Site. Under the DDA, Developer will take all steps necessary to construct and dedicate Horizontal Improvements to public use in accordance with the Subdivision Code.

3.4. Private Undertaking. Developer's proposed development of the FC Project Area is a private undertaking. Under the DDA and the Master Lease, Developer will have possession and control of the Master Lease Premises, subject only to any obligations and limitations imposed by the Master Lease, the DDA, and the DA Requirements. Except to the extent specified in the Transaction Documents, the City will have no interest in, responsibility for, or duty to third persons concerning the Horizontal Improvements until they are accepted.

4. DEVELOPER OBLIGATIONS

4.1. Public Benefits.

(a) Benefits Exceed Legal Requirements. The Parties acknowledge that development of the Project in accordance with the DDA and this Development Agreement will provide public benefits to the City beyond those achievable through existing laws.

(b) Consideration for Benefits.

(i) The City acknowledges that a number of the public benefits would not be achievable without Developer's express agreements under the DDA and this Development Agreement.

(ii) Developer acknowledges that: (1) the benefits it will receive under the DDA and this Development Agreement provide adequate consideration for its obligation to deliver the public benefits under the DDA and this Development Agreement; and (2) the Port would not be willing to enter into the DDA, and the City would not be willing to enter into this Development Agreement, without Developer's agreement to provide the public benefits.

(c) Specific Benefits. The public benefits that Developer must deliver in connection with the DDA include those described in the Project implementation listed below.

(i) The FC Project Area will be improved with new Shoreline Improvements, Public Spaces, Public ROWs, and Utility Infrastructure as shown in *DDA Exh B8 (Infrastructure Plan)*, the Design for Development, the

Streetscape Master Plan, and any Master Utilities Plans approved by the responsible Acquiring Agencies.

(ii) Developer is responsible for the historic rehabilitation of Historic Building 12 and Historic Building 21 under *DDA § 7.15 (Historic Buildings 12 and 21*) and Historic Building 2 if Developer elects to exercise its Option under *DDA § 7.1 (Developer Option*).

(iii) Developer has agreed that at least 30% of the residential units developed in the AHP Housing Area, currently consisting of the 28-Acre Site and Parcel K South (or other parcels designated in accordance with the AHP), will be affordable to low- and moderate-income households in compliance with the AHP (*DDA Exh B3)* by implementing the following measures.

(1) Developer will deliver two construction-ready Affordable Housing Parcels on-site and one on Parcel K South to the Port, which will lease them rent-free to MOHCD or its selected Affordable Housing Developers for development of Affordable Housing Projects.

(2) In lieu of including on-site Inclusionary Units under Planning Code sections 415-415.6, each Vertical Developer of a Market-Rate Condo Project on the 28-Acre Site will pay the 28-Acre Site Affordable Housing Fee described in the AHP.

(3) Each Vertical Developer of a Market-Rate Rental Project will provide Inclusionary Units.

(4) Each Vertical Developer of office and other nonresidential uses otherwise subject to the City's Jobs/Housing Linkage Program under Planning Code sections 413.1-413.11 will pay the 28-Acre Site Jobs/Housing Equivalency Fee, which MOHCD will use for development of Affordable Housing Projects in accordance with the AHP.

(iv) Under *DDA Exh B5 (Transportation Plan)*, Developer will pay a fee specific to the 28-Acre Site (the "**Transportation Fee**") in lieu of the City's Transportation Sustainability Fee, which SFMTA will apply towards transit, bicycle, and pedestrian improvements that will improve transportation access and mobility in the surrounding neighborhoods. Developer will also implement the Transportation Demand Management Plan (the "**Pier 70 TDM Program**") attached to the Transportation Plan to reduce estimated daily one-way vehicle trips by at least 20% from the number of trips identified in the Project's Transportation Impact Study at Project build-out.

(v) Developer will: (1) develop the FC Project Area with sustainable measures required under the Design for Development, Infrastructure Plan, Pier 70 TDM Program, and MMRP and endeavor to meet sustainability targets in the Sustainability Plan seeking to enhance livability, health and wellness, mobility and connectivity, ecosystem stewardship, climate protection, and resource efficiency of the FC Project Area; and (2) submit a report with each Phase Submittal after Phase 1 that will describe the Project's performance towards the sustainable construction measures and sustainability targets.

(vi) Developer will comply with training and hiring goals for hiring San Francisco residents and formerly homeless and economically disadvantaged individuals for temporary construction and permanent jobs under *DDA Exh B4 (Workforce Development Plan)*, including a Local Hiring mandatory participation level of 30% per trade consistent with the policy set forth in Administrative Code section 6.22(g)(3)(B).

(vii) Under Vertical DDAs with the Port, Vertical Developers will be required to provide opportunities for local business enterprises to participate in the economic opportunities created by the vertical development of the FC Project Area in compliance with the LBE requirements under *DDA Exh B4 (Workforce Development Plan).*

(viii) Developer will promote equality by complying with **Section 13.1** (Nondiscrimination in Contracts and Property Contracts).

(ix) Developer will provide the replacement space for the artists leasing space at the Noonan Building at Pier 70 in a newly constructed arts building or elsewhere at the 28-Acre Site and provide other space for arts and light-industrial uses, all as described in *DDA Exh B6 (Arts Program).*

(x) Vertical Developers will provide a minimum of 50,000 gsf of PDR-restricted space within the Project under *DDA § 7.15 (PDR).*

(xi) Vertical Developers will provide at least two on-site child care facilities for a minimum of 50 children per site to serve area residents and workers under *DDA § 7.16 (Child Care).*

(xii) If requested by Port, Developer or a Vertical Developer will make available to the City at least 15,000 gsf of community space in one or more commercial buildings under *DDA § 7.17 (Community Facility).*

(xiii) Owners and tenants in the Project will bear the cost of long-term maintenance and management of Public Spaces developed at the 28-Acre Site through Services Special Taxes that the Services CFDs will levy. Each Services CFD will require its respective Public Spaces operator/manager to adhere to standards ensuring public access to and quality maintenance, as described in *DDA § 15.10 (Maintenance of Public Improvements).*

4.2. Delivery; Failure to Deliver.

(a) Obligation to Provide. Developer's obligation to deliver certain public benefits is tied to a specific Phase or Development Parcel as described in *DDA Exh A8 (Schedule of Performance),* subject to Excusable Delay.

(i) After Developer obtains its first construction permit for Horizontal Improvements within a Phase, Developer's obligation to deliver public benefits tied to that Phase will survive until the pertinent public benefits are completed in accordance with the requirements of the DDA.

(ii) After a Vertical Developer obtains its First Construction Document for a Development Parcel that is tied to a specific public benefit, the Vertical Developer's obligation to deliver the pertinent public benefit will survive until it is completed in accordance with the requirements of the applicable Vertical DDA.

(b) Conditions to Delivery. Developer's obligation to deliver public benefits required in a Phase or in association with development of a Development Parcel is expressly conditioned as specified below, unless Developer's actions or inaction, including failure to meet the Schedule of Performance, causes the failure of condition.

(i) Developer's obligation to deliver public benefits to be provided in a Phase is conditioned on obtaining all Future Approvals required to begin construction of Phase Improvements.

(ii) Developer's obligation to deliver a public benefit specific to or dependent on vertical development will be coordinated with the applicable

Vertical Developer's construction of Vertical Improvements and may be an obligation of the Vertical Developer under the related Vertical DDA.

4.3. Developer Mitigation Measures. Under the DDA, Developer is obligated to implement Developer Mitigation Measures identified in the MMRP. At the Port's request, Planning may agree to undertake monitoring Developer's compliance with specified Developer Mitigation Measures on behalf of the Port.

4.4. Payment of Planning Costs. Under the DDA, Developer must reimburse the City for all Other City Costs, including those incurred by Planning in its implementation of this Development Agreement, exclusive of Administrative Fees. Planning agrees to comply with the procedures and limitations described in *FP § 9.2 (Port Accounting and Budget)* and *ICA § 3.6 (Cost Recovery)* as a condition to obtaining reimbursement of Planning's costs. More specifically, Planning will provide quarterly statements for payment to Developer through the Port, which will be responsible for disbursing reimbursement payments from Developer.

4.5. Indemnification of City. In addition to the indemnities provided under the DDA, Developer agrees to indemnify the City Parties from Losses caused directly or indirectly by an act or omission of Developer or any of its Agents in relation to this Development Agreement, except to the extent caused by gross negligence or willful misconduct of a City Party. Developer's indemnification obligation under this Section includes an indemnified City Party's reasonable attorneys' fees and related costs, including the cost of investigating any Claims against the City, and will survive the expiration or earlier termination of this Development Agreement.

4.6. Costa-Hawkins Waiver.

(a) State Policies. California directs local agencies regulating land use to grant density bonuses and incentives to private developers for the production of affordable and senior housing in the Costa-Hawkins Act (Cal. Gov't Code §§ 65915-65918). The Costa-Hawkins Act prohibits limitations on rental rates for dwelling units certified for occupancy after February 1, 1995, with certain exceptions. Section 1954.52(b) of the Costa-Hawkins Act creates an exception for dwelling units built under an agreement between the owner of the rental units and a public entity in consideration for a direct financial contribution and other incentives specified in section 65915 of the California Government Code.

(b) Waiver. Developer, on behalf of itself and its successors and assigns, agrees not to challenge and expressly waives any right to challenge Developer's obligations under the AHP as unenforceable under the Costa-Hawkins Act. Developer acknowledges that the City would not be willing to enter into this Development Agreement without Developer's agreement and waiver under this Section. Developer agrees to include language in substantially the following form in all Assignment and Assumption Agreements and consents to its inclusion in all Vertical DDAs and in recorded restrictions for any Development Parcel on which residential use is permitted.

> The Development Agreement and the DDA, which includes the AHP, provide regulatory concessions and significant public investment to the 28-Acre Site and Parcel K South that directly reduce development costs at the 28-Acre Site. The regulatory concessions and public investment include a direct financial contribution of net tax increment and other forms of public assistance specified in California Government Code section 65915. These public contributions result in identifiable, financially sufficient, and actual cost reductions for the benefit of Developer and Vertical Developers under California Government Code section 65915. In consideration of the City's direct

financial contribution and other forms of public assistance, the parties understand and agree that the Costa-Hawkins Act does not apply to any BMR Unit developed under the AHP for the 28-Acre Site.

5. VESTING AND CITY OBLIGATIONS

5.1. Vested Rights.

(a) Policy Decisions. By the Project Approvals, the Board of Supervisors and the Port Commission each made an independent policy decision that development of the Project is in the City's best interests and promotes public health, safety, general welfare, and Applicable Port Laws.

(b) Vested Elements. Developer will have the vested right to develop the Project, including the following elements (collectively, the "**Vested Elements**"):

(i) proposed land use plan and parcelization;

(ii) locations and numbers of Vertical Improvements proposed;

(iii) proposed height and bulk limits, including maximum density, intensity, and gross square footages;

(iv) permitted uses; and

(v) provisions for open space, vehicular access, and parking.

(c) Applicable Laws. The Vested Elements are subject to and will be governed as set specified in **Subsection 5.2(a)** (Agreement to Follow). The expiration of any construction permit or other Project Approval will not limit the Vested Elements. Developer will have the right to seek and obtain Future Approvals at any time during the DA Term, any of which will be governed by the DA Requirements.

(d) Future Approvals.

(i) Each Future Approval, when final, will be a Project Approval that is automatically incorporated into and vested under this Development Agreement.

(ii) The terms of this Development Agreement on the Reference Date will prevail over any conflict with any Future Approval or amendment to a Project Approval unless the Parties concurrently take action to harmonize the conflicting provisions.

5.2. Existing City Laws and Standards.

(a) Agreement to Follow.

(i) The City will process, consider, and review all Future Approvals in accordance with the following (collectively, the "**DA Requirements**"): (i) the Project Approvals; (ii) the Transaction Documents; and (iii) all other applicable City Laws in effect on the Reference Date (collectively, the "**Existing City Laws and Standards**"), subject to **Section 5.3** (Changes to Existing City Laws and Standards).

(ii) The City agrees not to exercise its discretionary authority in considering any application for a Future Approval in a manner that would change the policy decisions reflected in the DA Requirements or otherwise prevent or delay development of the Project as approved, subject to **Subsection 5.8(d)** (Effect of Final EIR).

(b) Pier 70 TDM Program.

(i) Section 169 is excluded from the Existing City Laws and Standards in accordance with "the Board of Supervisors' strong preference that Development Agreements should include similar provisions that meet the goals of the TDM Program." (Planning Code § 169.1(h)).

(ii) Mitigation Measure M-AQ-1f requires "a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20% compared to the total number of one-way vehicle trips identified in the project's Transportation Impact Study at project build-out."

(iii) The MMRP identifies Mitigation Measure M-AQ-1f as a Developer Mitigation Measure which is binding on Developer under the DDA. Developer has prepared a Pier 70 TDM Program that meets the requirements of Mitigation Measure M-AQ-1f and incorporates many of the TDM Program strategies described in Section 169, a copy of which is attached to the Transportation Plan (the "**Pier 70 TDM Program**").

(iv) The City has determined that the Pier 70 TDM Program will exceed the goals under Section 169 if implemented for the required compliance period. In the DA Ordinance, the Board of Supervisors stated that the FC Project Area will be exempt from Section 169 as long as Developer implements and complies with the Pier 70 TDM Program for the required compliance period. The Transportation Plan requires Developer to comply with the procedures of Planning Code section 169.4(e), which requires the Zoning Administrator to approve and cause the recordation of the Pier 70 TDM Program against the FC Project Area. [DA Ordinance to include streets in project.]

(c) Construction Codes. Nothing in this Development Agreement will preclude the City or the Port from applying then-current Construction Codes applicable to all Horizontal Improvements and all Vertical Improvements in the FC Project Area and the AHP Housing Area.

(d) Applicability of Uniform Codes. Nothing in this Development Agreement will preclude the Port from applying to the FC Project Area and the AHP Housing Area then-current provisions of the California Building Code, as amended and adopted in the Port Building Code.

(e) Applicability of Utility Infrastructure Standards.

(i) Nothing in this Development Agreement will preclude the City from applying to the FC Project Area and the AHP Housing Area then-current standards and City Laws for Utility Infrastructure for each Phase so long as:

(1) the standards for Utility Infrastructure are in place, applicable citywide, and imposed on the Project concurrently with the applicable Phase Approval;

(2) the standards for Utility Infrastructure as applied to the applicable Phase are compatible with, and would not require the retrofit, removal, supplementation, or reconstruction of Utility Infrastructure approved in Prior Phases; and

(3) if the standards for Utility Infrastructure deviate from those applied in Prior Phases, the deviations would not cause a Material Cost Increase in the Hard Costs and Soft Costs of Utility Infrastructure in the Phase.

(ii) If Developer claims a Material Cost Increase has occurred, it will submit to the City reasonable documentation of its claim through bids, cost estimates, or other supporting documentation reasonably acceptable to the City, comparing costs (or cost estimates, if not yet constructed) for any applicable Components of Utility Infrastructure in the immediately Prior Phase, Indexed to the date of submittal, to cost estimates to construct the applicable Components in the current Phase if then-current standards for Utility Infrastructure were to be applied.

(iii) If the Parties are unable to agree on whether the application of then-current standards for Utility Infrastructure cause Developer to incur a Material Cost Increase, the Parties will submit the matter to dispute resolution procedures described in *DDA art. 10 (Resolution of Certain Disputes)*.

(f) Subdivision Code and Map Act.

(i) The DDA authorizes Developer, from time to time and at any time, to file Subdivision Map applications with respect to some or all of the FC Project Area and to subdivide, reconfigure, or merge the parcels in the FC Project Area as necessary or desirable to develop a particular part of the Project. The specific boundaries of parcels will be set by Developer, subject to Port consent, and approved by the City during the subdivision process.

(ii) Nothing in this Development Agreement: (1) authorizes Developer to subdivide or use any part of the FC Project Area for purposes of sale, lease, or financing in any manner that conflicts with the Subdivision Map Act, the Subdivision Code, or the DDA; or (2) prevents the City from enacting or adopting changes in the methods and procedures for processing Subdivision Maps so long as the changes do not conflict with the DA Requirements.

(iii) The Parties acknowledge that so long as the Port is the landowner, it must both: (1) approve the specific boundaries that Developer proposes for Development Parcels; and (2) sign all Final Maps for the FC Project Area.

(g) Chapter 56 as Existing City Laws and Standards. The text of Chapter 56 on the Reference Date is attached as **DA Exhibit C**. The DA Ordinance contains express waivers and amendments to Chapter 56 consistent with this Development Agreement. Chapter 56, as amended by the DA Ordinance for the Project, is Existing City Laws and Standards under this Development Agreement that will prevail over any conflicting amendments to Chapter 56 unless Developer elects otherwise under **Subsection 5.3(c)** (Developer Election).

5.3. Changes to Existing City Laws and Standards.

(a) Applicability. Existing City Laws and Standards and any Change to Existing City Laws and Standards will apply to the Project except to the extent that they would conflict with the Project Approvals, the Transaction Documents, or Applicable Port Laws. In the event of a conflict, the terms of the Project Approvals, Transaction Documents, and Applicable Port Laws will prevail, subject to **Section 5.6** (Public Health and Safety and Federal or State Law Exceptions).

(b) Circumstances Causing Conflict. Any Change to Existing City Laws and Standards will be deemed to conflict with the Project Approvals and the Transaction Documents (including this Development Agreement) and be a Material Change if the change would:

(i) impede the timely implementation of the Project in accordance with the DA Requirements, including: (1) Developer's rights and obligations under the Financing Plan and the Acquisition Agreement; and (2) the rate, timing,

phasing, or sequencing of site preparation, development, or construction in any manner, including the demolition of existing buildings at the 28-Acre Site;

(ii) limit or reduce the density or intensity of uses permitted under the DA Requirements on any part of the AHP Housing Area, otherwise require any reduction in the square footage or number or change the location of proposed Vertical Improvements, or change or reduce other Horizontal or Vertical Improvements from that permitted under the DA Requirements;

(iii) limit or reduce the height or bulk of any part of the Project, or otherwise require any reduction in the height or bulk of individual proposed Vertical Improvements that are part of the Project from that permitted under the DA Requirements;

(iv) limit, reduce, or change the location of vehicular access or parking or the number and location of parking or loading spaces from that permitted under the DA Requirements;

(v) limit any land uses for the Project from that permitted under the DA Requirements;

(vi) change or limit the Project Approvals or Transaction Documents;

(vii) limit or control the availability of public utilities, services, or facilities or any privileges or rights to public utilities, services, or facilities for the Project as contemplated by the Project Approvals and Transaction Documents;

(viii) materially and adversely limit the processing or procurement of Future Approvals that are consistent with the DA Requirements;

(ix) increase or impose any new Impact Fees or Exactions as they apply to the Project, except as permitted under **Section 5.4** (Fees and Exactions);

(x) preclude Developer's or any Vertical Developer's performance of or compliance with the DA Requirements, or result in a Material Cost Increase to the Project for Developer or any Vertical Developer;

(xi) increase the obligations of Developer, any Vertical Developer, or their contractors under any provisions of the DDA or any Vertical DDA addressing contracting and employment above those in the Workforce Development Plan;

(xii) require amendments or revisions to the forms of Vertical DDA or Parcel Lease, or the Other City Requirements applicable to either, whenever they are later executed, unless the change:

(1) is related to building or reconstruction of the seawall, protection from or adaptation to sea level rise, or environmental protection measures directly related to the waterfront location of the Project; or

(2) impose City remedies and penalties that could result in termination, loss, or impairment of a Vertical Developer's rights under any Vertical DDA or Parcel Lease, or debarment from future contract opportunities with the City due to a Vertical Developer's or its subtenant's noncompliance;

(xiii) require the City or the Port to issue permits or approvals other than those required under the DA Requirements; or

(xiv) extend the DA Term, decrease the public benefits required to be provided, reduce the Impact Fees or Exactions, increase the maximum height,

density, bulk, or size of the Project, or otherwise materially alter the City's rights, benefits, or obligations under this Development Agreement.

(c) Developer Election.

(i) Developer may elect to have a Change to Existing City Laws and Standards that conflicts with the DA Requirements (except those described in **clause (xiii)** and **clause (xiv)** of **Subsection 5.3(b)** (Circumstances Causing Conflict)) applied to the Project by giving the City notice of Developer's election. Developer's election notice will cause the Change to Existing City Laws and Standards to be deemed to be Existing City Laws and Standards. But if the application of the Change to Existing City Laws and Standards would be a Material Change to the City's obligations under this Development Agreement, the application of the Change to Existing City Laws and Standards will require the concurrence of any affected City Agencies.

(ii) Nothing in this Development Agreement will preclude: (1) the City from applying any Change to Existing City Laws and Standards to any development that is not a part of the Project under this Development Agreement; or (2) Developer from pursuing any challenge to the application of any Changes to Existing City Laws and Standards to any part of the Project.

(d) Circumstances Not Causing Conflict. The Parties expressly agree to the following.

(i) When entering into any Vertical DDA or Parcel Lease, the Port will only be entitled to amend the forms approved at Project Approval and update the Other City Requirements if necessary to incorporate any Change to Existing City Laws and Standards under circumstances described in **clause (xii)** of **Subsection 5.3(b)** (Circumstances Causing Conflict).

(e) Port Role. The Port does not have the authority to approve a Change to Existing City Laws and Standards that is solely an exercise of the City's police powers, with or without Developer's consent under this Section. The City agrees to obtain the Port's concurrence before applying any Change to Existing City Laws and Standards that does not have citywide application to the FC Project Area or other land under Port jurisdiction.

5.4. Fees and Exactions.

(a) Generally. This Section will apply to the Project for as long as this Development Agreement remains in effect.

(i) The Project will be subject only to the Impact Fees and Exactions listed in this Section. The City will not impose any new Impact Fees or Exactions on development of the Project or impose new conditions or requirements for the right to develop the FC Project Area (including required contributions of land, public amenities, or services) except as set forth in the Transaction Documents.

(ii) The Parties acknowledge that this Section is intended to implement the Parties' intent that: (1) Developer have the right to develop the Project pursuant to specified and known criteria and rules; and (2) the City receive benefits that will be conferred as a result of the FC Project Area's development without abridging the City's right to act in accordance with its powers, duties, and obligations, except as specifically provided in this Development Agreement.

(iii) Developer acknowledges that: (1) this Section does not limit the City's discretion if Developer requests changes under *DDA § 3.5 (Changes to Project after Phase 1)*; (2) the Chief Harbor Engineer will require proof of

payment of applicable Impact Fees to the extent then due and payable as a condition to issuing certain Construction Permits; and (3) Impact Fees will be subject to increases permitted by Section 409 and will be payable at the fee schedule in effect when payment is due.

(b) Impact Fees and Exactions. Developer or Vertical Developers as applicable must satisfy the following Exactions and pay the following Impact Fees for the Project as and when due or payable by their terms.

(i) Transportation Fees. Each Vertical DDA for an Option Parcel will require the Vertical Developer to pay to SFMTA the Transportation Fee, and the Transportation Sustainability Fee under Planning Code sections 411A.1-411A.8 will not apply to the Project. The Transportation Plan attached to the DDA as *DDA Exh B3* and to the SFMTA Consent describes: (1) the manner in which each Vertical Developer will pay the Transportation Fee; (2) transportation projects in the vicinity of the FC Project Area that are eligible uses for Transportation Fees; and (3) procedures that SFMTA will use to allocate an amount equal to or greater than the Total Fee Amount (as defined in the Transportation Plan) for eligible transportation projects.

(ii) 28-Acre Site Jobs/Housing Equivalency Fee. Each Vertical DDA for an Option Parcel to be developed for office and other nonresidential uses will require the Vertical Developer to pay to MOHCD the fee described in this clause (the "**28-Acre Site Jobs/Housing Equivalency Fee**"), and the Jobs/Housing Linkage Program fee under Planning Code sections 413.1-413.11 will not apply to the Project. MOHCD will administer and use the 28-Acre Site Jobs/Housing Equivalency Fees for development of Affordable Housing Parcels in the SUD in accordance with the AHP.

(1) The 28-Acre Site Jobs/Housing Equivalency Fees for net additional gsf of office use is $28/gsf in 2017, subject to annual calendar year escalation by the same percentage increase applied to the Jobs/Housing Linkage Program fee for office use under Section 409.

(2) The 28-Acre Site Jobs/Housing Equivalency Fees will be the same as the Jobs/Housing Linkage Program fees for other uses listed on the San Francisco Citywide Development Impact Fee Register published annually with annual escalation in accordance with Section 409.

(3) Because Parcel E4, Historic Building 12, and Historic Building 21 are not Option Parcels under the DDA, Vertical Developers will not be required to pay the 28-Acre Site Jobs/Housing Equivalency Fees for space on Parcel E4 that is developed and dedicated to arts and nonprofit uses and space available for reuse in Historic Building 12 and Historic Building 21 after rehabilitation.

(iii) Affordable Housing. Under the AHP, each Vertical Developer of a Market-Rate Rental Project on the 28-Acre Site must provide Inclusionary Units and each Vertical Developer of a Market-Rate Condo Project must pay the 28-Acre Site Affordable Housing Fee, all in accordance with the terms and conditions of the AHP. In consideration of these requirements, Planning Code sections 415.1–415.11 will not apply to the Project.

(iv) Child Care.

(1) Under *DDA § 7.16 (Child Care)*, one Vertical Developer in Phase 1 and one Vertical Developer in Phase 2 or Phase 3 must provide on-site child care facilities within the potential child care locations

identified on the map attached to the DDA as *DDA Exh B7 (Potential Child Care Locations)*. Developer will designate the two selected Development Parcels in the pertinent Phase Submittal. Each facility must have a capacity of a minimum of 50 children and be available for lease to a qualified nonprofit operator at a cost not to exceed actual operating and tenant improvement costs reasonably allocated to similar facilities in similar buildings, amortized over the term of the lease. In consideration of these requirements, subject to **Paragraph 2**, Planning Code sections 414.1-414.15 and sections 414A.1–414A.8 will not apply to the Project.

(2) If Developer proposes to eliminate one or both of the childcare facilities from the Project, Developer will be required to pay an amount equal to the Impact Fees that would have been collected from Vertical Developers of the designated sites under Planning Code sections 414.1-414.15 and sections 414A.1–414A.8 as a condition to the City's approval. Any Developer payments under this Paragraph will be at its sole, unreimbursable expense.

(v) Community Facilities. At the City's request, which must be made during the Phase Submittal process under the DDA, Developer must designate up to 15,000 gsf of ground floor space for community facilities consistent with the requirements and limitations of *DDA § 7.17 (Community Facilities)*. If requested, Developer must make contiguous space in any one building available for up to the full 15,000 gsf if that amount of nonresidential space (excluding the specific frontages that are designated in the Design for Development/SUD as "priority retail") is proposed in that Phase. But community facility space may be distributed among two or more buildings by the Parties' agreement. Developer, in its sole discretion, may designate the location of each of the community facilities.

(vi) School Facilities Fees. Each Vertical Developer must pay the school facilities impact fees imposed under state law (Educ. Code §§ 17620-17626, Gov't Code §§ 65970-65981, & Gov't Code §§ 65995-65998) at the rates in effect at the time of assessment.

(c) Utility Fees.

(i) SFPUC Wastewater Capacity Charge. Each Vertical Developer must pay the SFPUC Wastewater Capacity Charge in effect on the connection or other applicable date specified by SFPUC.

(ii) SFPUC Water Capacity Charge. Each Vertical Developer must pay the SFPUC Water Capacity Charge in effect on the connection or other applicable date specified by SFPUC.

(iii) AWSS. Developer will make a fair share contribution to the City's auxiliary water supply system (AWSS) consistent with the Infrastructure Plan. The City will determine the amount, timing, and procedures for payment consistent with the AWSS requirements of the Infrastructure Plan as a condition of approval to the Master Tentative Map for the Project.

(iv) Office Allocation.

(1) An Office Development Authorization from the Planning Commission under Planning Code sections 321 and 322 and approval from the Planning Department are not required for new office development on land under the jurisdiction of the Port Commission. However, new office development on land under the jurisdiction of the

Port Commission will count against the annual maximum limit under Planning Code section 321.

(2) For the purposes of the Project, the amount of office development located on the 28-Acre Site to be applied against the annual maximum set in Planning Code subsection 321(a)(1) will be based on the approved building drawings for each office development. But to provide for the orderly development of new office space citywide, office development for the Project will be subject to the schedule and criteria described in *DDA Exh E2 (Office Development on Port Land)*.

(d) Administrative Fees. Developer will pay timely to the City all Administrative Fees as and when due. If further environmental review is required for a Future Approval, Developer must reimburse the City or pay directly all reasonable and actual costs to hire consultants and perform studies necessary for the review. Before engaging any consultant or authorizing related expenditures under this provision, the City will consult with Developer in an effort to reach agreement on: (i) the scope of work to be performed; (ii) the projected costs associated with the work; and (iii) the consultant to be engaged to perform the work.

5.5. Limitations on City's Future Discretion.

(a) Extent of Limitation. In accordance with **Section 5.3** (Changes to Existing City Laws and Standards), the City in granting the Project Approvals and, as applicable, vesting the Project through this Development Agreement is limiting its future discretion with respect to the Project and Future Approvals to the extent that they are consistent with the DA Requirements. For elements included in a request for a Future Approval that have not been reviewed or considered by the applicable City Agency previously (including additional details or plans for Horizontal Improvements or Vertical Improvements), the reviewing City Agency will exercise its discretion consistent with Planning Code section 249.79, the other DA Requirements and otherwise in accordance with customary practice.

(b) Consistency with Prior Approvals. In no event may a City Agency deny issuance of a Future Approval based on items that are consistent with the DA Requirements and matters previously approved. Consequently, the City will not use its discretionary authority to: (i) change the policy decisions reflected by the DA Requirements; or (ii) otherwise prevent or delay development of the Project as contemplated in the DA Requirements.

(c) ICA. Although Planning is not a signatory or consenting party to the ICA, the Planning Commission is familiar with its contents and agrees that Planning will comply with the ICA's procedural requirements to the extent applicable to Planning.

(d) When Future Discretion Is Unaffected. Nothing in this Section affects or limits the City's discretion with respect to proposed Future Approvals that seek a Material Modification not contemplated by the DA Requirements.

5.6. Public Health and Safety and Federal or State Law Exceptions.

(a) City's Exceptions.

(i) Each City Agency having jurisdiction over the Project has police power authority to exercise its discretion under Project Approvals and Transaction Documents in a manner that is consistent with the public health, safety, and welfare and at all times will retain its authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with

applicable changes in federal or state law affecting the physical environment (the "**Federal or State Law Exception"**).

(ii) Accordingly, a City Agency will have the authority to condition or deny a Future Approval or to adopt a Change to Existing City Laws and Standards applicable to the Project so long as the condition, denial, or Change to Existing City Laws and Standards is: (1) limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public; (2) required to comply with a federal or state law and in each case not for independent discretionary policy reasons that are inconsistent with the DA Requirements; or (3) applicable citywide or portwide, as applicable, to the same or similarly situated uses and applied in an equitable and nondiscriminatory manner.

(b) Meet and Confer; Right to Dispute.

(i) Except for emergency measures, upon request by Developer, the City will meet and confer with Developer in advance of the adoption of a measure under **Subsection 5.6(a)** (City's Exceptions) to the extent feasible. But the City will retain sole discretion with regard to the adoption of any Changes to Existing City Laws and Standards that fall within the Public Health and Safety Exception or the Federal or State Law Exception.

(ii) Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception. If the Parties are not able to reach agreement on the dispute following a reasonable meet and confer period, then Developer or the City can seek a judicial relief with respect to the matter.

(c) Amendments to Comply with Federal or State Law Changes. If a change in federal or state law that becomes effective after the Reference Date materially and adversely affects either Party's rights, benefits, or obligations under this Development Agreement, or would preclude or prevent either Party's compliance with any provision of the DA Requirements to which it is a Party, the Parties may agree to amend this Development Agreement. Any amendment under this Subsection will be limited to the extent necessary to comply with the law, subject to **Subsection 5.6(a)** (City's Exceptions), **Subsection 5.6(e)** (Effect on Project Performance), and **Section 11.1** (Amendment).

(d) Changes to Development Agreement Statute. The Parties have entered into this Development Agreement in reliance on the Development Agreement Statute in effect on the Reference Date. Any amendment to the Development Agreement Statute that would affect the interpretation or enforceability of this Development Agreement or increase either Party's obligations, diminish Developer's development rights, or diminish the City's benefits will not apply to this Development Agreement unless the changed law or a final judgment mandates retroactive application of the amended statute.

(e) Effect on Project Performance.

(i) If Developer determines that adoption of any Change to Existing City Laws and Standards that fall within the Public Health and Safety Exception or the Federal or State Law Exception would make the Project infeasible due to material and adverse effects on construction, development, use, operation, or occupancy, then Developer may deliver a Requested Change Notice to the Port (with a copy to the City) in accordance with *DDA § 3.4 (Changes to Project after Phase 1)* and *App ¶ A.5 (Notices).*

(ii) If the City determines that adoption of any Change to Existing City Laws and Standards that fall within the Public Health and Safety Exception or the Federal or State Law Exception would have a material and adverse effect on the delivery of Horizontal Improvements or Associated Public Benefits required under the DDA or the Port's ability to meet future Project Payment Obligations under the Financing Plan, then the Port may deliver a Requested Change Notice to Developer (with a copy to the City) in accordance with *DDA § 3.4 (Changes to Project after Phase 1)* and *App ¶ A.5 (Notices)*.

(iii) The Requested Change Notice will initiate the negotiation period under *DDA § 3.4(b) (Effect of Requested Change Notice)*, subject to extension by agreement, during which obligations under this Development Agreement will be tolled except to the extent the Parties expressly agree otherwise.

(iv) If the Port and Developer agree on changes to Transaction Documents during the negotiation period under *DDA § 3.4(b) (Effect of Requested Change Notice)*, the City will reasonably consider conforming changes to this Development Agreement and Project Approvals to the extent required.

(v) If at the end of the negotiation period under *DDA § 3.4(b) (Effect of Requested Change Notice)*, the Parties have failed to agree and obtain amendments to the Transaction Documents, and the Port is entitled to exercise its termination right under *DDA § 12.4(b) (Port Election to Terminate)* as to any portion of the FC Project Area, then this Development Agreement will terminate to the same extent as specified in **Section 2.2** (DA Term).

5.7. Future Approvals.

(a) No Actions to Impede. Except and only as required under **Section 5.6** (Public Health and Safety and Federal or State Law Exceptions), the City will take no action under this Development Agreement or impose any condition on the Project that would conflict with the DA Requirements. An action taken or condition imposed will be deemed to be in conflict with the DA Requirements if the actions or conditions result in the occurrence of one or more of the circumstances identified in **Subsection 5.3(b)** (Circumstances Causing Conflict).

(b) Expeditious Processing. City Agencies must process: (i) with due diligence all submissions and applications by Developer on all permits, approvals, and construction or occupancy permits for the Project; and (ii) any Future Approval requiring City action in accordance with **Section 5.8** (Criteria for Future Approvals) and in accordance with the ICA with respect to Horizontal Improvements and the SUD and Design for Development for Vertical Improvements.

5.8. Criteria for Future Approvals.

(a) Standard of Review Generally. The City:

(i) must not disapprove any application for a Future Approval based on any item or element that is consistent with the DA Requirements;

(ii) must consider each application for a Future Approval in accordance with its customary practices, subject to the DA Requirements;

(iii) may subject a Future Approval to any condition that is necessary to bring the Future Approval into compliance with the DA Requirements; and

(iv) will in no event be obligated to approve an application for a Future Approval that would effect a Material Change.

(b) Denial. If the City denies any application for a Future Approval that implements a portion of the Project as contemplated by the Project Approvals and the Transaction Documents, the City must specify in writing the reasons for denial and suggest modifications required for approval of the application. Any specified modifications must be consistent with the DA Requirements. The City must approve the re-submitted application if it: (i) corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with the DA Requirements; and (ii) does not include new or additional information or materials that give the City a reason to object to the application under the standards in this Development Agreement.

(c) Public ROWs. The Parties agree that the Project Approvals include the City's and the Port's approvals of Public ROW widths which will be consistent with the City's policy objective to ensure street safety for all users while maintaining adequate clearances for utilities and vehicles, including fire apparatus vehicles.

(d) Effect of Final EIR.

(i) The Parties acknowledge that: (1) the Final EIR prepared for development of the FC Project Area and the Illinois Street Parcels complies with CEQA; (2) the Final EIR contains a thorough analysis of the Project and possible alternatives; (3) the City adopted the Mitigation Measures in the MMRP to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project; and (4) the Board of Supervisors adopted CEQA Findings, including a statement of overriding considerations in connection with the Project Approvals, pursuant to CEQA Guidelines section 15093, for those significant impacts that could not be mitigated to a less than significant level.

(ii) For the reasons listed above, the City: (1) does not intend to conduct any further environmental review or require additional mitigation under CEQA for any aspect of the Project vested under this Development Agreement, and (ii) will rely on the Final EIR to the greatest extent possible in accordance with Applicable Laws in all future discretionary actions related to the Project.

(iii) Developer acknowledges that: (1) nothing in this Agreement prevents or limits the City's discretion to conduct additional environmental review in connection with any Future Approvals for construction, including some of the Associated Public Benefits, to the extent required by Applicable Laws, including CEQA; and (2) Changes to Existing City Laws and Standards or changes to the Project may require additional environmental review and additional Mitigation Measures.

(e) Effect of General Plan Consistency Findings.

(i) In Motion No. XXXX adopting General Plan Consistency Findings for the Project, the Planning Commission specified that the findings also would support all Future Approvals that are consistent with the Project Approvals. To the maximum extent practicable, Planning will rely exclusively on these General Plan Consistency Findings when processing and reviewing all Future Approvals, including schematic review under the SUD, proposed Subdivision Maps, and any other actions related to the Project requiring General Plan determinations.

(ii) Developer acknowledges that these General Plan Consistency Findings do not limit the City's discretion in connection with any Future Approval that requires new or revised General Plan consistency findings because of amendments to any Project Approval or Material Changes.

(f) Subdivision Maps. The Director of Public Works' approval of a Tentative Map for a Phase will extend the term of the map to the end of the DDA Term. But the term of a Tentative Map that is approved less than five years before the DDA Term ends will be extended for the maximum period permitted under Subdivision Code section 1333.3(b).

5.9. Public Financing.

(a) Financing Districts. The Project Approvals include formation of Sub-Project Area G-2, Sub-Project Area G-3, Sub-Project Area G-4, and the IRFD and Future Approval of the formation of the CFDs as described in the Financing Plan. The City agrees not to: (i) initiate proceedings for any new or increased special tax or special assessment that is targeted or directed at the 28-Acre Site except as provided in the Financing Plan; or (ii) take any other action that is inconsistent with the Financing Plan or the Tax Allocation MOU without Developer's consent.

(b) Limitation on New Districts. The City will not form any new financing or assessment district over any portion of the 28-Acre Site unless the new district applies to similarly-situated property citywide or Developer gives its prior written consent to or requests the proceedings.

(c) Permitted Assessments. Nothing in this Development Agreement limits the City's ability to impose new or increased taxes or special assessments, any equivalent or substitute tax or assessment, or assessments for the benefit of business improvement districts or community benefit districts formed by a vote of the affected property owners.

6. NO DEVELOPMENT OBLIGATION

This Development Agreement does not obligate Developer to begin or complete development of any portion of the Project or impose a schedule or a phasing plan for Developer to start or complete development. But the Parties have entered into this Development Agreement as one of the Transaction Documents that implements the DDA, which includes a Phasing Plan and a Schedule of Performance for horizontal development. The Parties have entered into this Development Agreement, and the Port and Developer have agreed to the Schedule of Performance and Phasing Plan in the DDA, with the express intent of avoiding a result similar to that in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465.

7. MUTUAL OBLIGATIONS

7.1. Cooperation by Parties.

(a) Generally. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Project Approvals and Transaction Documents and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Project Approvals and Transaction Documents are implemented. Nothing in this Development Agreement obligates the City to incur any costs except Other City Costs or costs that Developer must reimburse through the payment of Administrative Fees or otherwise.

(b) City.

(i) Through the procedures in the DDA and the ICA, the Port and the City have agreed to process Developer's submittals and applications for horizontal development diligently and to facilitate an orderly, efficient approval process that avoids delay and redundancies. The SUD specifies procedures for design review of vertical development.

(ii) The City, acting through the Assessor, the Treasurer-Tax Collector, and the Controller, has entered into the Tax Allocation MOU with the

Port, which establishes procedures to implement provisions of the Financing Documents that apply to future levy, collection, and allocation of Mello-Roos Taxes, Tax Increment, and Housing Tax Increment and to the issuance of Bonds for use at the 28-Acre Site and any Affordable Housing Parcel in the AHP Housing Area.

(c) Developer. Developer agrees to provide all documents, applications, plans, and other information necessary for the City to comply with its obligations under the Transaction Documents as reasonably requested with respect to any Developer submittal or application.

7.2. Other Regulators. The Port's obligations with respect to Regulatory Approvals that Developer and Vertical Developers must obtain from Other Regulators for Horizontal Improvements and Vertical Improvements are addressed in *DDA § 15.3 (Regulatory Approvals)* and *VDDA § 16.4 (Regulatory Approvals)*, respectively.

7.3. Third-Party Challenge.

(a) Effect. The filing of any Third-Party Challenge will not delay or stop the development of the Project or the City's issuance of Future Approvals unless the third party obtains a court order preventing the activity.

(b) Cooperation in Defense. The Parties agree to cooperate in defending any Third-Party Challenge to any City discretionary action on the Project. The City will notify Developer promptly after being served with any Third-Party Challenge filed against the City.

(c) Developer Cooperation. Developer at its own expense will assist and cooperate with the City in connection with any Third-Party Challenge. The City Attorney in his sole discretion may use legal staff of the Office of the City Attorney with or without the assistance of outside counsel in connection with defense of the Third-Party Challenge.

(d) Cost Recovery. Developer must reimburse the City for its actual defense costs, including the fees and costs of legal staff and any consultants. Subject to further agreement, the City will provide Developer with monthly invoices for all of the City's defense costs.

(e) Developer's Termination Option. Instead of bearing the defense costs of any Third-Party Challenge, Developer may terminate this Development Agreement (and the DDA under *DDA § 12.6(a) (Mutual Termination Right))* by delivering a notice to the City, with a copy to the Port, specifying a termination date at least 10 days after the notice is delivered. If Developer elects this option, the Parties will promptly cooperate to file a request for dismissal. Developer's and the City's obligations to cooperate in defending the Third-Party Challenge, and Developer's responsibility to reimburse the City's defense costs, will end on the Termination Date, but Developer must indemnify the City from any other liability caused by the Third-Party Challenge, including any award of attorneys' fees or costs.

(f) Survival. The indemnification, reimbursement, and cooperation obligations under this Section will survive termination under **Subsection 7.3(e)** (Developer's Termination Option) or any judgment invalidating any part of this Development Agreement.

7.4. Estoppel Certificates.

(a) Contents. Either Party may ask the other Party to sign an estoppel certificate as to the following matters to the best of its knowledge:

(i) This Development Agreement is in full force and effect as a binding obligation of the Parties.

(ii) This Development Agreement has not been amended, or if amended, identifying the amendments or modifications and stating their date and nature.

(iii) The requesting Party is not in default in the performance of its obligations under this Development Agreement, or is in default in the manner specified.

(iv) The City's findings in the most recent Annual Review under **Article 8** (Periodic Compliance Review).

(b) Response Period. A Party receiving a request under this Section must execute and return the completed estoppel certificate within 30 days after receiving the request. A Party's failure to either execute and return the completed estoppel certificate or provide a detailed written explanation for its failure to do so will be an Event of Default following notice and opportunity to cure as set forth in **Section 9.1** (Meet and Confer).

(c) Reliance. Each Party acknowledges that Interested Persons may rely on an estoppel certificate provided under this Section. At an Interested Person's request, the City will provide an estoppel certificate in recordable form, which the Interested Person may record in the Official Records at its own expense.

8. PERIODIC COMPLIANCE REVIEW

8.1. Initiation or Waiver of Review.

(a) Statutory Provision. Under section 65865.1 of the Development Agreement Statute, the Planning Director must conduct annually a review of developers' good faith compliance with approved development agreements (each, an "**Annual Review**"). The Planning Director will follow the process set forth in this Article and in Chapter 56 for each Annual Review.

(b) No Waiver. The City's failure to timely complete an Annual Review of Developer's good faith compliance with this Development Agreement in any year during the DDA Term will not waive the City's right to do so at a later date.

(c) Planning Director's Discretion. The DA Ordinance waives certain provisions of compliance review procedures specified in Chapter 56 and grants discretion to the Planning Director with respect to Annual Reviews as follows.

(i) For administrative convenience, the Planning Director may designate the annual date when each Annual Review of Developer's compliance will begin, which may be the same or different from the date specified in Chapter 56 (in either case, the "**Annual Review Date**").

(ii) The Planning Director may elect to forego an Annual Review for any of the following reasons: (1) before the designated Annual Review Date, Developer reports that no significant construction work occurred on the FC Project Area during that year; (2) either Developer or the Port has initiated procedures to terminate the DDA; or (3) the Planning Director otherwise decides an Annual Review is unnecessary.

8.2. Required Information from Developer.

(a) Contents of Report. Under **Subsection 8.1(c)** (Planning Director's Discretion), Developer will submit a letter to the Planning Director setting forth in

reasonable detail the status of Developer's compliance with its obligations under this Development Agreement and the other Transaction Documents with respect to delivery of the public benefits described in **Section 4.1** (Public Benefits). Developer must provide the requested letter within 60 days after each Annual Review Date during the DA Term, unless the Planning Director specifies otherwise. The letter to the Planning Director must include appropriate supporting documentation, which may include an estoppel certificate from the Port in a form acceptable to the Port, the Planning Director, and Developer.

(b) Standard of Proof. An estoppel certificate from the Port, if submitted with Developer's letter, will be conclusive proof of Developer's compliance with specified obligations under the DDA and be binding on the City. Each Other City Agency responsible for monitoring and enforcing any part of Developer's compliance with the Vested Elements and its obligations under **Article 4** (Developer Obligations) and **Article 7** (Mutual Obligations) must confirm Developer's compliance or provide the Planning Director with a statement specifying the details of noncompliance. Developer has the burden of proof to demonstrate compliance by substantial evidence of matters not covered in the Port's estoppel certificate or any Other City Agency's letter.

8.3. City Review. The Annual Review will include determining Developer's compliance with **Article 4** (Developer Obligations) and **Article 7** (Mutual Obligations) and whether an Event of Default or a Material Breach has occurred and is continuing under the DDA.

8.4. Certificate of Compliance. Within 60 days after Developer submits its letter, the Planning Director will review the information submitted by Developer and all other available evidence on Developer's compliance with **Article 4** (Developer Obligations) and **Article 7** (Mutual Obligations). The Planning Director must provide copies to Developer of any evidence provided by sources other than Developer promptly after receipt. The Planning Director will summarize his determination as to each item in a letter to Developer. If the Planning Director finds Developer in compliance, then the Planning Director will follow the procedures in Administrative Code section 56.17(b).

8.5. Public Hearings. If the Planning Director finds Developer is not in compliance or that a public hearing is in the public interest, or a member of the Planning Commission or the Board of Supervisors requests a public hearing on Developer's compliance, the Planning Director will follow the procedures in Administrative Code section 56.17(c), and the City may enforce its rights and remedies under this Development Agreement and Chapter 56.

8.6. Effect on Transferees. If Developer has Transferred its rights and obligations for any Phase in compliance with the DDA, then each Transferee must provide a separate letter reporting compliance for itself and for each Vertical Developer in the Phase. The procedures, rights, and remedies under this Article and Chapter 56 will apply separately to Developer and any Transferee, each with respect only to obligations attaching to each Phase for which it is obligated. This requirement does not apply to Vertical Developers.

8.7. Notice and Cure Rights.

(a) Amended Rights. This Section reflects an amendment to Chapter 56 in the DA Ordinance that is binding on the Parties and all other persons affected by this Development Agreement.

(b) Required Findings. If the Planning Commission makes a finding of noncompliance, or if the Board of Supervisors overrules a Planning Commission finding of compliance, in a public hearing under Administrative Code section 56.17(c), then the Planning Commission or the Board of Supervisors, as applicable, must specify to the Breaching Party in reasonable detail how it failed to comply and specify a reasonable time for the Breaching Party to cure its noncompliance.

(c) Cure Period. The Breaching Party must have a reasonable opportunity to cure its noncompliance before the City begins proceedings to modify or terminate this Development Agreement under Administrative Code section 56.17(f) or section 56.18. The cure period under this Section must not be less than 30 days and must in any case provide a reasonable amount of time for the Breaching Party to effect a cure. City proceedings to modify or terminate this Development Agreement under Administrative Code section 56.17(f) or section 56.18 must not begin until the specified cure period has expired.

8.8. No Limitation on City's Rights After Event of Default. The City's rights and powers under this Article are in addition to, and do not limit, the City's rights to terminate or take other action under this Development Agreement after an event of Event of Default by Developer.

9. DEFAULTS AND REMEDIES

9.1. Meet and Confer. Before sending a notice of default under **Section 9.2** (Events of Default), the Aggrieved Party must follow the process in this Section.

(a) Good Faith Effort. The Aggrieved Party must make a written request that the Breaching Party meet and confer to discuss the alleged breach within three business days after the request is delivered. If, despite the Aggrieved Party's good faith efforts, the Parties have not met to confer within seven business days after the Aggrieved Party's request, the Aggrieved Party will be deemed to have satisfied the meet and confer requirement.

(b) Opportunity to Cure. If the Parties meet in response to the Aggrieved Party's request, the Aggrieved Party must allow a reasonable period of not less than 10 days for the Breaching Party to respond to or cure the alleged breach.

(c) Exclusions. The meet and confer requirement does not apply to a Breaching Party's failure to pay amounts when due under this Development Agreement or in circumstances where delaying the Aggrieved Party's right to send a notice of default under **Section 9.2** (Event of Default) would impair the Aggrieved Party's rights under this Development Agreement.

9.2. Events of Default.

(a) Specific Events. The occurrence of any of the following will be an Event of Default under this Development Agreement.

(i) A Breaching Party fails to make any payment when due if not cured within 30 days after the Aggrieved Party delivers notice of nonpayment.

(ii) A Breaching Party fails to satisfy any other material obligation under this Development Agreement when required if not cured within 60 days after the Aggrieved Party delivers notice of noncompliance or if the breach cannot be cured within 60 days, the Breaching Party fails to take steps to cure the breach within the 60-day period and diligently complete the cure within a reasonable time.

(b) Cross-Defaults. *DDA § 5.7 (Defaults and Breaches)* will apply to Events of Default by Developer and any finding of Developer's noncompliance under this Development Agreement.

(c) Certain Payment Defaults. Developer or the applicable Transferee will have a complete defense if the City alleges an Event of Default in Developer's obligation to pay Other City Costs in the following circumstances.

(i) If Developer or the applicable Transferee made a payment to the Port that included the allegedly unpaid Other City Costs, but the Port failed to disburse the portion of the amount payable to the aggrieved City Agency.

(ii) If a City Agency claiming nonpayment did not submit a timely statement for reimbursement of the claimed Other City Costs under *ICA § 3.6 (Cost Recovery).*

9.3. Remedies for Events of Default.

(a) Specific Performance. After an Event of Default under this Development Agreement, the Aggrieved Party may file an action and seek injunctive relief against or specific performance by the Breaching Party. Nothing in this Section requires an Aggrieved Party to delay seeking injunctive relief if it believes in good faith that postponement would cause it to suffer irreparable harm.

(b) Limited Damages. The Parties agree as follows.

(i) Monetary damages are an inappropriate remedy for any Event of Default other than a payment Event of Default under this Development Agreement.

(ii) The actual damages suffered by an Aggrieved Party under this Development Agreement for any Event of Default other than a payment Event of Default would be extremely difficult and impractical to fix or determine.

(iii) Remedies at law other than monetary damages and equitable remedies are particularly appropriate for any Event of Default other than a payment Event of Default under this Development Agreement. Except to the extent of actual damages, neither Party would have entered into this Development Agreement if it were to be liable for consequential, punitive, or special damages under this Development Agreement.

(c) Exclusive Remedy for Material Breach under DDA. For any Material Breach that results in the termination of the DDA in whole or in part, this Development Agreement will automatically and concurrently terminate on the Termination Date as to the affected portion of the Project.

(d) City Processing. The City may suspend action on any Developer requests for approval or take other actions under this Development Agreement during any period in which payments from Developer are past due.

(e) Port's Rights if Not Delivered. The Port has rights and remedies under the DDA and Vertical DDAs to secure the delivery of public benefits under *DDA § 12.2(c) (Material Breaches by Developer), DDA § 15.4* (*Substantial Completion), DDA § 15.5 (Final Completion),* and *VDDA § 14.2 (Default by Vertical Developer),* which variously entitle the Port to withhold completeness determinations, declare Developer to be in Material Breach of the DDA, and declare a Vertical Developer Default under the applicable Vertical DDA on specified conditions.

9.4. Changes to Existing City Laws and Standards. Under section 65865.4 of the Development Agreement Statute, either Party may enforce this Development Agreement regardless of any Changes to Existing City Laws and Standards unless this Development Agreement has been terminated by agreement under **Article 11** (Amendment or Termination), as a remedy for an Event of Default under **Subsection 9.3(c)** (Exclusive Remedy for Material Breach under DDA), by termination proceedings under Chapter 56, or by termination of the DDA.

10. ASSIGNMENTS; LENDER RIGHTS

10.1. Successors' Rights. Applicable provisions of this Development Agreement will apply to Developer's and Vertical Developers' successors (each, a "**DA Successor**") in accordance with procedures under *DDA art. 6 (Transfers)* and *VDDA § 18.3 (Transfers)*. Each DA Successor will be assigned specified rights and obligations under the Development Agreement by an Assignment and Assumption Agreement in the form of *DDA Exh D10* or *VDDA Exh XX* (each, a "**DA Assignment**"). Each DA Assignment will be recorded in accordance with the DDA or Vertical DDA, as applicable. Each DA Assignment will provide for Developer or the pertinent Vertical Developer to be released from obligations under this Development Agreement to the extent assumed by the DA Successor.

10.2. Effect of Assignment. On the Reference Date of a DA Assignment, the following will apply.

(a) DA Successor as Party. The DA Successor will have all rights assigned and obligations assumed under the DA Assignment and will be deemed a Party to this Development Agreement to the extent of its rights and obligations.

(b) Direct Enforcement Against Successors. The City will have the right to enforce directly against any DA Successor every obligation that it assumed under its DA Assignment. A DA Successor's claim that its default is caused by Developer's or a Vertical Developer's, as applicable, breach of any duty or obligation to the DA Successor arising out of the DA Assignment or other related transaction will not be a valid defense to enforcement by the City.

(c) Partial Developer Release. Developer will remain liable for obligations under this Development Agreement only to the extent that Developer retains liability under the applicable DA Assignment. Developer will be released from any prospective liability or obligation, and its DA Successor will be deemed to be subject to all future rights and obligations of Developer under this Development Agreement to the extent specified in the DA Assignment.

(d) Partial Vertical Developer Release. A Vertical Developer will remain liable for obligations under this Development Agreement only to the extent that it retains liability under the applicable DA Assignment. A Vertical Developer will be released from any prospective liability or obligation, and its DA Successor will be deemed to be subject to all future rights and obligations of the Vertical Developer, under this Development Agreement to the extent specified in the DA Assignment.

(e) No Cross-Default. An Event of Default under this Development Agreement, any Vertical DDA, or any Parcel Lease, as applicable, by a DA Successor (in each case, a "**Successor Default**") with respect to any part of the Project will not be an Event of Default by Developer with respect to any other part of the Project. The occurrence of a Successor Default will not entitle the City to terminate or modify this Development Agreement with respect to any part of the Project that is not the subject of the Successor Default.

10.3. Applicable Lender Protections Control Lender Rights.

(a) Rights to Encumber Horizontal Interests. Developer, Vertical Developers, and DA Successors have or will have the right to encumber their real property interests in and development rights at the FC Project Area in accordance with the Applicable Lender Protections, which are incorporated by this reference.

(b) Lender's Rights and Obligations. The rights and obligations of a Lender under this Development Agreement will be identical to its rights and obligations under the Applicable Lender Protections.

(c) City's Rights and Obligations.

(i) The City's obligations with respect to a Lender, including any Successor by Foreclosure, will be identical to those of the Port under the Applicable Lender Protections.

(ii) The City will reasonably cooperate with the request of a Lender or Successor by Foreclosure to provide further assurances to assure the Lender or Successor by Foreclosure of its rights under this Development Agreement, which may include execution, acknowledgement, and delivery of additional documents reasonably requested by a Lender confirming the applicable rights and obligations of the City and Lender with respect to a Mortgage.

(iii) No breach by Developer, a Vertical Developer, or a DA Successor of any obligation secured by a Mortgage will defeat or otherwise impair the Parties' rights or obligations under this Development Agreement.

(d) Successor by Foreclosure. A Successor by Foreclosure will succeed to all of the rights and obligations under and will be deemed a Party to this Development Agreement to the extent of the defaulting Borrower's rights and obligations.

10.4. Requests for Notice.

(a) Lender Request. If the City receives a written request from a Lender, or from Developer or a DA Successor requesting on a Lender's behalf, a copy of any notice of default that the City delivers under this Development Agreement that provides the Lender's address for notice, then the City will deliver a copy to the Lender concurrently with delivery to the Breaching Party. The City will have the right to recover its costs to provide notice from the Breaching Party or the applicable Lender.

(b) City Request. This provision is the City's request under California Civil Code section 2924 that a copy of any notice of default or notice of sale under any Mortgage be delivered to City at the address shown on the cover page of this Development Agreement.

10.5. No Third-Party Beneficiaries. Except for DA Successors with vested rights at the FC Project Area and to the extent of any Interested Person's rights, the City and Developer do not intend for this Development Agreement to benefit or be enforceable by any other persons. More specifically, this Development Agreement has no unspecified third-party beneficiaries.

11. AMENDMENT OR TERMINATION

11.1. Amendment. This Development Agreement may be amended only by the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56. The Port Commission, the Planning Commission, and the Board of Supervisors must all approve any amendment that would be a Material Change. Following an assignment, the City and Developer or any DA Successor may amend this Development Agreement as it affects Developer, the DA Successor, or the portion of the FC Project Area to which the rights and obligations were assigned without affecting other portions of the FC Project Area or other Vertical Developers and DA Successors. The Planning Director may agree to any amendment to this Development Agreement that is not a Material Change, subject to the approval of any City Agency that would be affected by the amendment.

11.2. Termination. This Development Agreement may be terminated in whole or in part by: (a) the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56; or (b) by termination of the DDA as provided by **Section 2.2** (DA Term).

12. DEVELOPER REPRESENTATIONS AND WARRANTIES

12.1. Due Organization and Standing. Developer represents that it has the authority to enter into this Development Agreement. Developer is a Delaware limited liability company duly organized and validly existing and in good standing under the laws of Delaware. Developer has all requisite power to own its property and authority to conduct its business in California as presently conducted.

12.2. Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Development Agreement and it has no knowledge of any inability to perform its obligations under this Development Agreement. Developer's execution and delivery of this Development Agreement have been duly and validly authorized by all necessary action. This Development Agreement will be a legal, valid, and binding obligation of Developer, enforceable against Developer on its terms.

12.3. Other Documents. To the current, actual knowledge of Jack Sylvan, after reasonable inquiry, no document that Developer furnished to the City in relation to this Development Agreement, nor this Development Agreement, contains any untrue statement of material fact or omits any material fact that makes the statement misleading under the circumstances under which the statement was made.

12.4. No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any petition under federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no action is threatened.

13. CITY REQUIREMENTS

13.1. Nondiscrimination in Contracts and Property Contracts (Admin. Code ch. 12B, ch. 12C).

In the performance of the Development Agreement, Developer covenants and agrees not to discriminate against or segregate any person or group of persons on any basis listed in section 12955 of the California Fair Employment and Housing Act (Calif. Gov't Code §§ 12900-12996), or on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, AIDS/HIV status, weight, height, association with members of protected classes, or in retaliation for opposition to any forbidden practices against any employee of, any City employee working with, or applicant for employment with Developer, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social, or other establishment or organization operated by Developer.

13.2. Prevailing Wages and Working Conditions in Construction Contracts (Calif. Labor Code §§ 1720 et seq.; Admin. Code § 6.22(e)).

(a) Labor Code Provisions. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms "public work" and "paid for in whole or part out of public funds" are defined in and subject to exclusions and further conditions under California Labor Code sections 1720-1720.6.

(b) Requirement. Developer agrees that all workers performing labor in the construction of public works or Improvements for the City under the DDA will be: (i) paid the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e); and (ii) subject to the hours and days of labor provisions in Administrative Code section 6.22(f). All contracts or subcontracts for public works or Improvements for the City must require that all persons

performing labor under the contract be paid the Prevailing Rate of Wages for the labor so performed, as provided by Administrative Code section 6.22(e). Any contractor or subcontractor performing a public work or constructing Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. For current Prevailing Wage Rates, see the OLSE website or call the OLSE at 415-554-6235.

13.3. Tropical Hardwood and Virgin Redwood Ban (Env. Code ch. 8).

The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Environment Code sections 802(b) and 803(b). Developer agrees that, except as permitted by the application of Environment Code sections 802(b) and 803(b), Developer will not use or incorporate any tropical hardwood or virgin redwood in the construction of the Improvements or provide any items to the construction of the Project, or otherwise in the performance of the DDA that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Developer fails to comply in good faith with any of Environment Code chapter 8, Developer will be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or 5% of the total amount of the contract dollars, whichever is greater.

13.4. Conflicts of Interest (Calif. Gov't Code §§ 87100 et seq. & §§ 1090 et seq.; Charter § 15.103; Campaign and Govt'l Conduct Code art. III, ch. 2).

Through its execution of this DA, Developer acknowledges that it is familiar with Charter section 15.103, Campaign and Governmental Conduct Code article III, chapter 2, and California Government Code sections 87100 et seq. and sections 1090 et seq., certifies that it does not know of any facts that would violate these provisions and agrees to notify the City if Developer becomes aware of any such fact during the DA Term.

13.5. Sunshine (Calif. Gov't Code §§ 6250 et seq.; Admin. Code ch. 67).

Developer understands and agrees that under the California Public Records Act (Calif. Gov't Code §§ 6250 et seq.) and the City's Sunshine Ordinance (Admin. Code ch. 67), the Transaction Documents and all records, information, and materials that Developer submits to the City may be public records subject to public disclosure upon request. Developer may mark materials it submits to the City that Developer in good faith believes are or contain trade secrets or confidential proprietary information protected from disclosure under public disclosure laws, and the City will attempt to maintain the confidentiality of these materials to the extent provided by law. Developer acknowledges that this provision does not require the City to incur legal costs in any action by a person seeking disclosure of materials that the City received from Developer.

13.6. Contribution Limits-Contractors Doing Business with the City (Campaign and Govt'l Conduct Code § 1.126).

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

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

(i) Developer is familiar with Section 1.126.

(ii) Section 1.126 applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more.

(iii) If applicable, the prohibition on contributions applies to: (1) Developer; (2) each member of Developer's governing body; (3) Developer's chairperson, chief executive officer, chief financial officer, and chief operating officer; (4) any person with an ownership interest of more than 20% in Developer; (5) any subcontractor listed in the contract; and (6) any committee, as defined in Campaign and Governmental Conduct Code section 1.104, that is sponsored or controlled by Developer.

13.7. Implementing the MacBride Principles - Northern Ireland (Admin. Code ch. 12F).

The City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourage them to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

14. MISCELLANEOUS

The following provisions apply to this Development Agreement in addition to those in **Appendix Part A** (Standard Provisions and Rules of Interpretation).

14.1. Addresses for Notice. Notices given under this Development Agreement are governed by *App ¶ A.5 (Notices)*. Notice addresses are listed below.

To the City:	John Rahaim Director of Planning San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, CA 94102
With a copy to:	Dennis J. Herrera, Esq. City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Attn: _____
To Developer:	FC Pier 70, LLC 949 Hope Street, Suite 200 Los Angeles, CA 90015 Attention: Mr. Kevin Ratner
With a copy to:	Forest City Enterprises, Inc. 50 Public Square 1360 Terminal Tower Cleveland, OH 44113 Attention: Amanda Seewald, Esq.

14.2. Limitations on Actions. Administrative Code section 56.19 establishes certain limitations on actions to challenge final decisions made under Chapter 56, as follows:

(a) Board of Supervisors. Any action challenging a Board of Supervisors decision under Chapter 56 must be filed within 90 days after the decision is finally approved.

(b) Planning. Any action challenging any of the following Planning decisions under Chapter 56 must be filed within 90 days after any of the following becomes final: (i) a Planning Director decision under Administrative Code section 56.15(d)(3); or (ii) a Planning Commission resolution under section 56.17(e).

14.3. Attachments. The attached Appendix excerpts, Port Consent, SFMTA Consent, SFPUC Consent, and exhibits listed below are incorporated in and are a part of this Development Agreement.

DA Exhibit A: Legal description and Site Plan
DA Exhibit B: Project Approvals
DA Exhibit C: Chapter 56 as of the Reference Date

Developer and the City have executed this Development Agreement as of the last date written below.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

By: _____
Kevin Ratner,
Vice President

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
John Rahaim
Director of Planning

Date: _____

Authorized by Ordinance No. _____
on [effective date].

APPROVED AND AGREED:

By: _____
Naomi Kelly
City Administrator

By: _____
Mohammad Nuru,

Director of Public Works

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

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APPENDIX EXCERPT
(To be inserted)

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CONSENT TO DEVELOPMENT AGREEMENT
Port Commission

The Port Commission of the City and County of San Francisco has reviewed the Development Agreement between the City and Developer relating to the proposed Project to which this Consent to Development Agreement is attached and incorporated. Capitalized terms used in this Port Consent have the meanings given to them in the Development Agreement or the Appendix.

By executing this Port Consent, the undersigned confirms the following.

1. The Port Commission, at a duly noticed public hearing, adopted the CEQA Findings, including the Statement of Overriding Considerations, and the MMRP, including Mitigation Measures for which the Port is the responsible agency.
2. At that meeting, the Port Commission considered and consented to the Development Agreement as it relates to matters under Port jurisdiction and delegated to the Port Director or her designee any future Port approvals under the Development Agreement, subject to Applicable Laws, including the City Charter.
3. The Port Commission directed the Chief Harbor Engineer to: (a) require evidence that Developer has paid any Impact Fees that are required as a condition to issuing any Construction Permit for horizontal development; (b) require evidence that Vertical Developers have paid all Impact Fees that are required as a condition to issuing any Construction Permit for vertical development; and (c) report promptly to the Planning Director the location, date, and amount of office space approved for construction in any Construction Permit as provided in *DDA Exh E2 (Office Development on Port Land)*.
4. The Port Commission also authorized Port staff to take any measures reasonably necessary to assist the City in implementing the Development Agreement in accordance with Port Resolution No. _____.

[Remainder of page intentionally left blank.]

By authorizing the Port Director to execute this Port Consent, the Port Commission affirms that it does not intend to limit, waive, or delegate in any way its exclusive authority or rights under Applicable Port Law.

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
San Francisco Port Commission

By: _____
Elaine Forbes,
Executive Director

Date: _____

Authorized by Port Resolution No. _____
and Board of Supervisors Resolution No. _____.

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Eileen Malley
Port General Counsel

[Remainder of page intentionally left blank.]

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco has reviewed the Development Agreement between the City and Developer relating to the proposed Project to which this Consent to Development Agreement is attached and incorporated. Capitalized terms used in this SFMTA Consent have the meanings given to them in the Development Agreement or the Appendix.

By executing this SFMTA Consent, the undersigned confirms the following:

1. The SFMTA Board of Directors, after considering at a duly noticed public hearing the CEQA Findings for the Project, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, consented to and agreed to be bound by the Development Agreement as it relates to matters under SFMTA jurisdiction and delegated to the Director of Transportation or his designee any future SFMTA approvals under the Development Agreement, subject to Applicable Laws, including the City Charter.
2. The SFMTA Board of Directors also:
    a. approved Mitigation Measure M-AQ-1f, which requires "a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20% compared to the total number of one-way vehicle trips identified in the project's Transportation Impact Study at project build-out," which is a Developer Mitigation Measure under the MMRP;
    b. approved Developer's Pier 70 TDM Program for the Transportation Plan (attached to this SFMTA Consent) and found that the Pier 70 TDM Program meets the requirements of Mitigation Measure M-AQ-1f and incorporates many of the Pier 70 TDM Program strategies described in Section 169;
    c. directed the Director of Transportation to administer and direct the allocation and use of Transportation Fees in an amount no less than the Total Fee Amount as provided in the Transportation Plan; and
    d. delegated to the Director of Transportation the authority to approve the Streetscape Master Plan for the FC Project Area.
3. The SFMTA Board of Directors also authorized SFMTA staff to take any measures reasonably necessary to assist the City in implementing the Development Agreement in accordance with SFMTA Resolution No. ____ _____, including the Transportation Plan and the transportation-related Mitigation Measures.

[Remainder of page intentionally left blank.]

By authorizing the Director of Transportation to execute this SFMTA Consent, the SFMTA does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA as set forth in Article VIIIA of the City Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
San Francisco Municipal Transportation Agency

By: _____
Edward D. Reiskin,
Director of Transportation

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Susan Cleveland-Knowles
SFMTA General Counsel

SFMTA Resolution No. _____
Adopted: _____, 2017

Attachment: Pier 70 Transportation Plan and TDM Program

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ATTACHMENT TO SFMTA CONSENT

Transportation Plan and Pier 70 TDM Program

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CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Public Utilities Commission

The San Francisco Public Utilities Commission of the City and County of San Francisco has reviewed the Development Agreement between the City and Developer relating to a proposed Project to which this Consent to Development Agreement is attached and incorporated. Capitalized terms used in this SFPUC Consent have the meanings given to them in the Development Agreement or the Appendix.

By executing this SFPUC Consent, the undersigned confirms the following.

1. The SFPUC, after considering at a duly noticed public hearing the CEQA Findings for the Project, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program (MMRP), approved the Utility-Related Mitigation Measures and consented to and agreed to be bound by the Development Agreement as it relates to matters under SFPUC jurisdiction.
2. Vertical Developers will be required to pay the SFPUC Wastewater Capacity Charge and the SFPUC Water Capacity Charge, each at rates in effect on the applicable connection dates.
3. Developer will be required to pay a fair share contribution to the City's AWSS consistent with the Infrastructure Plan, the terms and timing of payment to be established as a condition of approval to the master tentative subdivision map for the FC Project Area.
4. The SFPUC will coordinate and cooperate with the Port and the Public Works Department regarding public infrastructure inspection and acceptance. The SFPUC's responsibilities for the permitting, acceptance, operations and maintenance of utility related components constructed pursuant to this agreement are contingent on execution of a memorandum of understanding between the Port, SFPUC and other relevant City agencies regarding the implementation of such responsibilities.
5. In accordance with Chapter 99 of the San Francisco Administrative Code, the SFPUC has performed a feasibility study and has determined that it will provide electric power to the project. SFPUC agrees that electrical service will be reasonably available for the Project's needs and that the projected price for electrical service is comparable to rates in San Francisco for comparable service. The SFPUC agrees to work with the Developer to provide temporary construction and permanent electric services pursuant to its Rules and Regulations for Electric Service. The SFPUC has provided their space requirements for related infrastructure to the Port, and WDT facilities will be provided in accordance with Infrastructure Plan Section 16.2.1

By authorizing the General Manager to execute this SFPUC Consent, the SFPUC does not intend to in any way limit, waive or delegate the exclusive authority of the SFPUC as set forth in Article XIIIB of the City Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
San Francisco Public Utilities Commission

By: _____
Harlan Kelly,
General Manager

Authorized by SFPUC Resolution No. _____

APPROVED AS TO FORM:
DENNIS J. HERRERA City Attorney

By: _____
Francesca Gessner
SFPUC General Counsel

San Francisco Public Utilities Commission
Resolution No. _____
Adopted: _____, 2017

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DA EXHIBIT A

Legal Description and Site Plan

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DA EXHIBIT B

Project Approvals

1. **Final Environmental Impact Report**, State Clearinghouse No. _____
   - Certify and adopt CEQA Findings: Planning Commission Motion No. _____
   - Adopt CEQA Findings and MMRP: Port Resolution No. _____
   - Adopt CEQA Findings and MMRP: Board of Supervisors Resolution No. _____
2. **General Plan Consistency Findings**
   - Planning Commission Motion No. _____
3. **General Plan Amendment**
   - Planning Commission Motion No. _____
   - Board of Supervisors Ordinance No. _____
4. **Planning Code and Zoning Map Ordinance**
   a. amend section 201 to include the Pier 70 SUD
   b. add section 249.79 to establish the Pier 70 SUD
   c. amend Sectional Map ZN08 to show the Pier 70 SUD Mixed Use District
   d. amend Sectional Map HT08 to show the height limits in the Pier 70 SUD
   e. amend new Sectional Map SU08 to create the Pier 70 SUD
   - Recommend: Planning Commission Motion No. _____
   - Consent: Port Resolution No. _____
   - Approve: Board of Supervisors Ordinance No. _____
5. **Pier 70 SUD Design for Development**
   - Approve: Planning Commission Motion No. _____
   - Approve: Port Resolution No. _____
6. **Development Agreement and DA Ordinance**
   - Recommend: Planning Commission Motion No. _____
   - Consent: Port Resolution No. _____
   - Consent: SFMTA Resolution No. _____
   - Consent: SFPUC Resolution No. _____
   - Approve: Board of Supervisors Ordinance No. _____
   - Signed by: Planning Director and Developer
7. **Public Trust Exchange Agreement**
   - Approve per Burton Act (AB 2659, stats. 1987, ch. 310): Port Resolution No. _____
   - Approve per Burton Act (AB 2659, stats. 1987, ch. 310): Board of Supervisors Resolution No. _____
   - Signed by: Executive Officer of State Lands Commission and Port Director

8. Disposition and Development Agreement as Development Plan under Charter § B7.320 and Prop F

a. Form of Master Lease

b. Form of Vertical DDA for Option Parcels

c. Form of Parcel Lease for Option Parcels

d. Historic Building 12 and Historic Building 21 lease terms

e. Parcel E4 lease terms

f. MOU with MOHCD for development of Affordable Housing Parcels

- Approve: Port Resolution No. _____
- Approve under Charter § 9.118: Board of Supervisors Resolution No. _____
- Signed by: Developer and Port Director

9. Parcel K North public offering

- Approve: Port Resolution No. _____
- Approve: Board of Supervisors Resolution No. _____

10. Waterfront Land Use Plan / Waterfront Design and Access Element amendments

- Approve: Port Resolution No. _____

11. San Francisco Administrative Code amendment to article X of chapter 43

- Recommend: Port Resolution No. _____
- Approve: Board of Supervisors Ordinance No. _____

12. Financing Districts

a. formation proceedings for IFD Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4

b. formation proceedings for IRFD No. 2 (Hoedown Yard)

- Recommend: Port Resolution No. _____
- Approve: Board of Supervisors Resolution Nos. _____ and Ordinance Nos. _____

13. Memorandum of Understanding re Interagency Cooperation

- Approve: Port Resolution No. _____
- Adopt CEQA Findings and Consent: SFMTA Resolution No. _____
- Adopt CEQA Findings and Consent: SFPUC Resolution No. _____
- Consent: SFFD Resolution No. _____
- Approve: Board of Supervisors Resolution No. _____
- Signed by: Mayor, City Administrator, Director of Public Works, and Port Director

14. Memorandum of Understanding re Assessment, Collection, and Allocation of Taxes

- Approve: Port Resolution No. _____
- Approve: Board of Supervisors Resolution No. _____
- Signed by: Assessor, Treasurer-Tax Collector, Controller, and Port Director