

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

2  
3 **Resolution approving a Disposition and Development Agreement between the Port and**  
4 **FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the**  
5 **larger area known as Seawall Lot 349 or Pier 70; adopting findings under the California**  
6 **Environmental Quality Act; adopting findings of consistency with the General Plan, and**  
7 **the eight priority policies of Planning Code, Section 101.1(b); and adopting public trust**  
8 **consistency findings.**

9  
10 WHEREAS, California Statutes of 1968, Chapter 1333 ("Burton Act") and Charter,  
11 Sections 4.114 and B3.581, empower the City and County of San Francisco, acting through  
12 the San Francisco Port Commission ("Port"), with the power and duty to use, conduct,  
13 operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction;  
14 and

15 WHEREAS, The Port owns approximately 72 acres along San Francisco's Central  
16 Waterfront, roughly bounded by Mariposa Street, Illinois Street, 22nd Street, and the San  
17 Francisco Bay known as Pier 70; and

18 WHEREAS, Pier 70 includes an approximately 28-acre area known as the "28-Acre  
19 Site," bounded generally by Illinois Street on the west, 22nd Street on the south, 20th Street  
20 on the north and San Francisco Bay on the east; and

21 WHEREAS, From 2007 to 2010, the Port conducted a community process that  
22 evaluated the unique site conditions and opportunities at Pier 70 and built a public consensus  
23 for Pier 70's future that nested within the policies established for the Eastern Neighborhoods-  
24 Central Waterfront; and

1           WHEREAS, This process culminated in the Pier 70 Preferred Master Plan, which was  
2 endorsed by the Port Commission in May 2010, and the proposed mixed-use development of  
3 Pier 70 (the "Pier 70 Mixed Use Development Project"); and

4           WHEREAS, In April 2011, by Resolution No. 11-21, the Port Commission awarded to  
5 Forest City Development California, Inc., ("Forest City"), through a competitive process, the  
6 opportunity to negotiate for the development of the 28-Acre Site as a mixed-use development  
7 and historic preservation project (the "28-Acre Site Project"); and

8           WHEREAS, Forest City Development California, Inc. is now wholly owned by Forest  
9 City Realty Trust, Inc., a New York Stock Exchange-listed real estate company; and

10           WHEREAS, In May 2013, by Resolution No. 13-20, the Port Commission endorsed the  
11 Term Sheet for the 28-Acre Site Project; and

12           WHEREAS, Subsequently, in June 2013, by Resolution No. 201-13, the Board of  
13 Supervisors found the 28-Acre Site Project fiscally feasible under Administrative Code,  
14 Chapter 29 and endorsed the Term Sheet for the 28-Acre Site Project; and

15           WHEREAS, Port staff and FC Pier 70, LLC, ("Developer"), a wholly-owned affiliate of  
16 Forest City Realty Trust, Inc., have negotiated the terms of the Disposition and Development  
17 Agreement ("DDA"), a copy of which is in Board File No. 170986 and incorporated in this  
18 resolution by reference, and related transaction documents that are incorporated into the DDA  
19 and provide the overall road map for development of the 28-Acre Site Project, including a  
20 Financing Plan, an Infrastructure Plan, an Affordable Housing Plan, a Transportation Plan that  
21 includes a Transportation Demand Management Program, a Workforce Development Plan, an  
22 arts program for the use of the arts building on Parcel E4 (including replacement studio space  
23 for the artist community in the Noonan building), and forms of an interim Master Lease,  
24 Vertical Disposition and Development Agreement and Parcel Lease (including applicable  
25 lease terms for Historic Buildings 2, 12 and 21); and

1           WHEREAS, Developer has engaged in an extensive community outreach process that  
2 has included more than 120 community meetings since 2011, including workshops, focus  
3 groups, art events, formal and informal presentations, open houses and site tours; and

4           WHEREAS, Additionally, in 2014, 73% of voters supported Proposition F, the ballot  
5 measure supporting reuse of the area and increasing the height limits for the 28-Acre Site  
6 Project, conditional upon Port Commission approval of a development plan for the 28-Acre  
7 Site Project; and

8           WHEREAS, Developer's parent company, Forest City Realty Trust, Inc., is a publicly-  
9 traded company with exceptional access to capital, and Port financial staff have reviewed and  
10 confirmed the financial capacity of Developer's parent in amounts sufficient to satisfy its  
11 obligation to fund its obligations under the DDA; and

12           WHEREAS, The parties wish to enter into the DDA substantially in the form in Board  
13 File No. 170986; and

14           WHEREAS, Concurrently with this resolution, the Board of Supervisors has taken or  
15 intends to take a number of other actions in furtherance of the 28-Acre Site Project, including:  
16 (1) approving a trust exchange agreement between the City, acting through the Port  
17 Commission, and the California State Lands Commission ("Exchange Agreement"); (2)  
18 approving amendments to the Planning Code that create the Pier 70 Special Use District  
19 ("Pier 70 SUD") over the 28-Acre Site and the adjacent Illinois Street Parcels and related  
20 amendments to the zoning maps; (3) approving the Development Agreement between the  
21 City and Developer; (4) approving the Design for Development, which provides more detailed  
22 land use controls of the Pier 70 SUD; (5) approving a memorandum of understanding for  
23 interagency cooperation among the Port and other City agencies with respect to approvals  
24 related to the subdivision of the 28-Acre Site and construction of infrastructure and other  
25 public facilities; (6) approving formation proceedings for sub-project areas to Project Area G of

1 City and County of San Francisco Infrastructure Financing District No. 2 and a memorandum  
2 of understanding between the Port and the Assessor, the Treasurer-Tax Collector, and the  
3 Controller regarding the assessment, collection, and allocation of ad valorem and special  
4 taxes to the financing districts; and (7) approving the public offering and disposition of Parcel  
5 K North that is adjacent to the 28-Acre Site; and

6 WHEREAS, Under the DDA and other transaction documents, at full build-out, the 28-  
7 Acre Site Project will include: (1) 1,100 to 2,150 new residential units, including on-site  
8 housing affordable to a range of low- to moderate-income households as described in the  
9 Affordable Housing Plan; (2) between 1 million and 2 million gross square feet of new  
10 commercial and office space; (3) rehabilitation of three significant contributing resources to  
11 the Union Iron Works Historic District; (4) space for small-scale manufacturing, retail, and  
12 neighborhood services; (5) transportation demand management on-site, a shuttle service, and  
13 payment of impact fees to the Municipal Transportation Agency for improved transportation  
14 connections through the neighborhood; (6) 9 acres of new open space, potentially including  
15 active recreation on rooftops, a playground, a market square, a central commons, and  
16 waterfront parks along the shoreline; (7) on-site strategies to protect against sea level rise;  
17 and (8) replacement studio space for artists currently leasing space in the Noonan Building  
18 and a new arts space; and

19 WHEREAS, The DDA governs: (1) Developer's obligations to complete horizontal  
20 development of the 28-Acre Site Project, including entitlements, site preparation, subdivision  
21 and construction work related to streets and sidewalks, public realm amenities (e.g., parks  
22 and open space), public utilities and shoreline improvements (together, "Horizontal  
23 Development"), all to create development parcels and support and protect buildings; and (2)  
24 Developer's option to purchase or ground lease at fair market value the majority of  
25 developable lots in the 28-Acre Site for vertical development, all in accordance with all of the

1 governing land use and entitlement documents, including the Development Agreement, Pier  
2 70 SUD, and Design for Development; and

3 WHEREAS, The DDA also governs Developer's obligations to deliver various public  
4 benefits, including: (1) the rehabilitation of Historic Buildings 2, 12, and 21 in accordance with  
5 the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties; (2) a new  
6 up to approximately 90,000-square-foot arts facility; (3) replacement space for current tenants  
7 of the Noonan Arts Building, which may be incorporated in the arts facility; (4) at least 50,000  
8 square feet of Production, Distribution and Repair space; (5) two on-site child care facilities or  
9 in-lieu child-care fees; (6) 9 acres of new parks and open space; (7) on-site sea level rise  
10 protections and funding for sea level rise improvements along the Port's Bay waterfront; and  
11 (8) affordable housing as described below; and

12 WHEREAS, The DDA includes a Schedule of Performance that includes outside dates  
13 for the completion of public infrastructure, including streets, utilities and parks, preparation of  
14 affordable housing pads, and the development of Historic Buildings 12 and 21 and the Arts  
15 Building; and

16 WHEREAS, The DDA provides the Port with remedies in the event that Developer  
17 does not meet its obligations under the Schedule of Performance or other provisions of the  
18 DDA, including specific performance and termination for material breach; and

19 WHEREAS, The DDA, which is premised on approval of the Pier 70 trust exchange  
20 under the Exchange Agreement, (1) establishes processes to ensure that the Port receives  
21 fair market value for the sale or lease of all option parcels as established by appraisal or  
22 public offerings on the open market; (2) provides for three development parcels to be used for  
23 100% affordable housing development through an agreement with the City that the Port will  
24 lease the parcels at below-market rents and the City will apply impact fees payable by  
25 developers of commercial parcels and market-rate housing to development of the affordable

1 housing sites; (3) provides for the use of nontrust revenue sources in the form of tax  
2 increment and special tax revenues to the extent necessary to make the rehabilitation of three  
3 historic buildings financially feasible; and (4) provides for the Port to be repaid, with interest,  
4 from nontrust revenues for costs of constructing infrastructure and public facilities needed and  
5 desired to support development at the 28-Acre Site; and

6 WHEREAS, The Financing Plan provides that (1) Developer is responsible for funding  
7 all entitlement costs and the costs of constructing Horizontal Development to the extent other  
8 28-Acre Site Project sources are not available, subject to reimbursement; (2) Developer's  
9 costs will be repaid with an 18% market rate of return from a number of potential sources,  
10 including the sale or lease of parcels at fair market value, community facilities district and  
11 infrastructure financing district proceeds, and, at the Port's discretion, Port capital; and (3)  
12 after Developer's costs are repaid, land revenues will be split 55% to the Port and 45% to  
13 Developer; and

14 WHEREAS, The Affordable Housing Plan includes measures to ensure that at least  
15 30% of all residential units produced at the 28-Acre Site and the adjacent Parcel K South are  
16 affordable to low- and moderate-income households, with the following components: (1) 150  
17 or more inclusionary rental units, representing 20% of all on-site rental units; and (2) 320 or  
18 more permanently affordable units in three buildings to be developed by local nonprofits in the  
19 28-Acre Site and Parcel K South; and

20 WHEREAS, The Port will enter into a memorandum of understanding with the Mayor's  
21 Office of Housing and Community Development for developer selection, rent-free leases, and  
22 development of the permanently affordable housing projects on the three sites; and

23 WHEREAS, The Infrastructure Plan includes the conceptual level planning elements of  
24 all the infrastructure systems necessary to serve the Pier 70 SUD and describes Developer's  
25

1 obligation to complete streets and infrastructure to support development of the 28-Acre Site;  
2 and

3 WHEREAS, The Port's and City's third-party developers will retain certain infrastructure  
4 obligations related to the adjacent Illinois Street Parcels, including the 20th Street Plaza,  
5 Michigan Street, and Irish Hill Park; and

6 WHEREAS, The Transportation Plan requires, among other things, that (1) vertical  
7 developers pay a transportation fee that the Municipal Transportation Agency will use and  
8 allocate for transportation improvements in the area; and (2) Developer, building owners, and  
9 tenants implement a Transportation Demand Management Program designed to reduce 28-  
10 Acre Site Project-related daily one-way vehicular auto trips by 20%; and

11 WHEREAS, The Workforce Development Plan requires Developer and its contractors  
12 and subcontractors, vertical developers, and tenants to comply with applicable workforce  
13 provisions, including a 30% local hiring commitment, local business enterprise utilization,  
14 participation in the City's "First Source" hiring programs, and up to \$1,000,000 in funding to  
15 support expansion of CityBuild and TechSF training for District 10 residents; and

16 WHEREAS, The Master Lease is a form that sets forth the terms and conditions under  
17 which the Port will lease most of the 28-Acre Site to Developer when it is ready to begin  
18 constructing horizontal improvements, including parks, streets and utilities in accordance with  
19 the DDA; and

20 WHEREAS, Individual development parcels will be removed from the Master Lease  
21 upon completion of the horizontal improvements serving each parcel as they are leased or  
22 sold to vertical developers, and streets and parks will be removed from the Master Lease  
23 upon acceptance by acquiring City agencies; and

24 WHEREAS, The Vertical Disposition and Development Agreement is a form that sets  
25 forth (1) the conditions to a vertical developer's acquisition of the lease or fee interest in each

1 development parcel within the 28-Acre Site; and (2) applicable Port and City requirements for  
2 constructing the applicable development project; and

3 WHEREAS, The Parcel Lease is a form that sets forth the terms and conditions under  
4 which vertical developers will acquire rights to development parcels that are conveyed by  
5 ground lease rather than deed, and will be modified, as described in the DDA, to address  
6 circumstances unique to (1) the Arts Building expected to be built on Parcel E4 (including  
7 restrictions to allow arts uses and on rent) and (2) Historic Buildings 2, 12, and 21 (including  
8 Port review of construction plans and consistency with Secretary's Standards); and

9 WHEREAS, On August 24, 2017, the Planning Commission (1) reviewed and  
10 considered the Final Environmental Impact Report for the Pier 70 Mixed Use Project ("FEIR")  
11 (Case No. 2014-001272ENV); (2) found the FEIR to be adequate, accurate and objective,  
12 thus reflecting the independent analysis and judgment of the Planning Department and the  
13 Planning Commission; and (3) by Motion No. 19976, certified the FEIR as accurate, complete  
14 and in compliance with the California Environmental Quality Act ("CEQA"), the CEQA  
15 Guidelines, and Chapter 31 of the San Francisco Administrative Code; and

16 WHEREAS, At the same hearing, the Planning Commission approved the Pier 70  
17 Mixed Use Project and in so doing, adopted approval findings under CEQA by Motion No.  
18 19977, including a Statement of Overriding Considerations (the "Pier 70 CEQA Findings"),  
19 and adopted a Mitigation Monitoring and Reporting Program ("MMRP"), and

20 WHEREAS, A copy of the Planning Commission Motions, the Pier 70 CEQA Findings,  
21 and the MMRP are in Board File No. 170864 and may be found in the records of the Planning  
22 Department at 1650 Mission Street, San Francisco, CA, and are incorporated in this resolution  
23 by reference as if fully set forth herein; and

24 WHEREAS, At the same hearing, the Planning Commission, by Resolution No. 19978,  
25 adopted findings that the actions contemplated in this resolution are consistent, on balance,



1 with the City's General Plan and the eight priority policies of Planning Code, Section 101.1(b)  
2 ("Pier 70 General Plan Consistency Findings"); and

3 WHEREAS, A copy of the Pier 70 General Plan Consistency Findings are in Board File  
4 No. 170864 and incorporated in this resolution by reference; and

5 WHEREAS, On September 26, 2017, by Resolution 17-43, the Port Commission  
6 approved the DDA, finding that the 28-Acre Site Project would be consistent with and further  
7 the purposes of the common law public trust and the statutory trust under the Burton Act  
8 ("Public Trust Findings"); recommended to the Board of Supervisors approval of the DDA;  
9 approved the DDA as the Development Plan under Section 4 of the Union Iron Works Historic  
10 District Housing, Waterfront Parks, Jobs and Preservation Initiative (Proposition F, November  
11 2014); and authorized the Executive Director of the Port, or her designee, to execute the  
12 DDA, subject to Board of Supervisors' approval of the DDA; and

13 WHEREAS, A copy of Port Commission Resolution 17-73 is in Board File No. 170986  
14 and incorporated in this resolution by reference; and

15 WHEREAS, The Board of Supervisors has reviewed the FEIR, the MMRP and the  
16 CEQA Findings, and finds that the approvals before the Board of Supervisors are within the  
17 scope of the FEIR and that no substantial changes in the Pier 70 Mixed Use Project or the  
18 circumstances surrounding the Pier 70 Mixed Use Project have occurred and no new  
19 information that could not have been known previously showing new significant impacts or an  
20 increase in severity in impacts has been discovered since the FEIR was certified; now,  
21 therefore, be it

22 RESOLVED, That the Board of Supervisors adopts the Pier 70 General Plan  
23 Consistency Findings as its own; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors adopts the Pier 70 CEQA  
2 Findings as its own and adopts the MMRP and imposes its requirements as a condition to this  
3 approval action; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors hereby approves the DDA,  
5 adopts the Port Commission's Public Trust Findings as its own, and approves the  
6 development plan described in the DDA as a Development Plan under Section 4 of the Union  
7 Iron Works District Housing, Waterfront Parks, Jobs and Preservation Initiative (Proposition F,  
8 November 2014); and, be it

9 FURTHER RESOLVED, That the Board of Supervisors authorizes the Port's Executive  
10 Director, or her designee, to execute the DDA in substantially the form in Board File No.  
11 170986; and, be it

12 FURTHER RESOLVED, That to the extent that implementation of the DDA involves the  
13 execution and delivery of additional agreements, notices, consents and other instruments or  
14 documents by the Port subject to Board of Supervisors' approval under Charter, Section  
15 9.118, including, without limitation, instruments conveying or leasing development parcels to  
16 vertical developers (such as the Master Lease, Parcel Leases and Vertical Disposition and  
17 Development Agreements) (collectively, "Subsidiary Agreements"), the Port and the Executive  
18 Director, as they may deem necessary or appropriate, in consultation with the City Attorney,  
19 are hereby authorized to enter into all such Subsidiary Agreements so long as the  
20 transactions governed by such Subsidiary Agreements are contemplated in, and comply with  
21 the terms of, the DDA, and with respect to the Master Lease, Parcel Leases and Vertical  
22 Disposition and Development Agreements, are substantially in the form of the Master Lease,  
23 Parcel Lease and Vertical Disposition Agreement attached as Exhibits to the DDA in Board  
24 File No. 170986; and, be it  
25

1           FURTHER RESOLVED, That the Board of Supervisors authorizes all officers,  
2 employees, and agents of the Port and the City to take all steps that they deem necessary or  
3 appropriate, to the extent permitted by applicable law, in order to implement the DDA in  
4 accordance with this resolution, including preparation and attachment of exhibits, execution of  
5 subsequent documents, or to otherwise effectuate the purpose and intent of this resolution  
6 and the DDA; and, be it

7           FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive  
8 Director of the Port, or her designee, to enter into any amendments or modifications to the  
9 DDA or any of the Subsidiary Agreements that the Executive Director determines, in  
10 consultation with the City Attorney, are in the best interest of the Port, do not materially  
11 decrease the benefits to or materially increase the obligations or liabilities of the Port, and are  
12 in compliance with all applicable laws, such determination to be conclusively evidenced by the  
13 execution and delivery by such person or persons of any such documents; and, be it

14           FURTHER RESOLVED, That the Board of Supervisors requests the Executive Director  
15 of the Port to provide an annual written report to the Board of Supervisors on the status of the  
16 28-Acre Site Project.

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**City and County of San Francisco**  
**Tails**  
**Resolution**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 170986

**Date Passed:** October 31, 2017

Resolution approving a Disposition and Development Agreement between the Port and FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the larger area known as Seawall Lot 349 or Pier 70; adopting findings under the California Environmental Quality Act; adopting findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b); and adopting public trust consistency findings.

October 19, 2017 Budget and Finance Committee - CONTINUED

October 26, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 26, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

October 31, 2017 Board of Supervisors - ADOPTED

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

File No. 170986

I hereby certify that the foregoing Resolution was ADOPTED on 10/31/2017 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo  
Clerk of the Board

Mayor

11/9/2017

Date Approved