CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR

VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

(PIER 70 – PARCEL K NORTH)

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AND

64 PKN OWNER, LLC
A DELAWARE LIMITED LIABILITY COMPANY

DATED AS OF _____, 2019

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE- PRESIDENT
GAIL GILMAN, COMMISSIONER
VICTOR MAKRAS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER

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VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

(Pier 70 – Parcel K North)

THIS VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of _____, 20____, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating by and through the San Francisco Port Commission ("**Port**"), and 64 PKN Owner, LLC, a Delaware limited liability company ("**Vertical Developer**"). All Exhibits and Schedules attached hereto are hereby incorporated by reference into this Agreement and will be construed as a single instrument and referred to herein as this "Agreement." Initially capitalized terms in this Agreement are defined in ***Article 26***.

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port owns certain real property located in the City and County of San Francisco consisting of approximately 67,988 square feet of unimproved land, as more particularly described on ***Exhibit A-1*** attached hereto and depicted on ***Exhibit A-2*** attached hereto (as each may be refined and adjusted in accordance with the terms of this Agreement, the "**Property**" or "**Parcel K North**"). The Property is located adjacent to (i) the "**Historic Core Project**" as more particularly described in that certain Lease Disposition and Development Agreement dated September 16, 2014, by and between Historic Pier 70, LLC and Port, and Lease No. L-15814 dated as of July 29, 2015, by and between Historic Pier 70, LLC and Port, and (ii) the "**28-Acre Site Project**" located on approximately 28-acres of land in the southeast corner of Pier 70 (the "**28-Acre Site**") as more particularly described in that certain Disposition and Development Agreement dated May 2, 2018, by and between FC Pier 70, LLC ("**Horizontal Developer**") and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the "**Horizontal DDA**"), and that certain Master Lease dated May 2, 2018, by and between Horizontal Developer and Port affecting a portion of the 28 - Acre Site (as the same may be amended, supplemented, modified and/or assigned from time to time, the "**Master Lease**").

B. Planning Code Section 249.79 (the Pier 70 Special Use District) (as amended from time to time, the "**SUD**") establishes the basic land use standards for vertical development of the Property, the 28-Acre Site and other property within the SUD and sets forth the process and requirements for design review and approval related to vertical development. As authorized under the SUD, Port and the Planning Commission approved the Design for Development that sets forth design standards and design guidelines that will apply to all Vertical Development within the SUD.

C. On September 26, 2017, by Resolution No. 17-52, the Port Commission approved (i) the terms of a competitive solicitation and sale of the Property for no less than its appraised fair market value, and (ii) the form of a Vertical Disposition and Development Agreement to be entered into between Port and the successful bidder. The Board of Supervisors approved this Agreement by Resolution __-__ on [insert date].

D. Vertical Developer was selected to purchase and develop the Property in a broker-managed, competitive solicitation process undertaken by Port and the City's Real Estate Division.

E. Subject to the terms and conditions of this Agreement, Vertical Developer desires to purchase the Property and Port is willing to sell the Property on the terms and conditions set forth herein.

F. Vertical Developer proposes to construct the project generally described in ***Exhibit B*** (as the same may be modified from time to time in accordance with the terms hereof, the "**Vertical Project**") under the terms of this Agreement. The term "**Vertical Project**" includes a for-sale residential project of approximately 261,700 square feet of residential Gross Floor Area

and appurtenant commercial uses and infrastructure, which the Parties expect will be constructed in two phases under a final subdivision map issued by the City. In connection with the Vertical Project, except as set forth in ***Section 12.2***, Vertical Developer is obligated to construct (i) an approximately 0.3-acre plaza at the southwest corner of Illinois and 20th Streets (the "**20th Street Plaza**") (as further described in the Design for Development) and (ii) a new, one block segment of Michigan Street between 20th Street and the future 21st Street, including the Michigan Street ROW and the Michigan Street Plaza (collectively, "**Michigan Street**") (as further described in the Streetscape Master Plan), each as more particularly set forth in ***Exhibit B*** (collectively, the "**PKN Horizontal Improvements**") The Vertical Project and the PKN Horizontal Improvements are collectively referred to herein as the "**PKN Project**".

G. The parties now desire to enter into this Agreement to set forth the terms and conditions upon which Port will deliver a fee interest in the Property to Vertical Developer and Vertical Developer will develop the PKN Project.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Port and Vertical Developer hereby agree as follows:

AGREEMENT

1. CONVEYANCE OF PROPERTY.

Subject to the terms, covenants and conditions set forth herein, Port agrees to sell to Vertical Developer, and Vertical Developer agrees to purchase from Port, Port's interest in the Property.

2. PURCHASE PRICE.

2.1.*Purchase Price*. The purchase price for the Property is Twenty-Four Million and 00/100 Dollars ($24,000,000) (the "**Purchase Price**").

2.2.*Payment of Purchase Price; Deposit*. Vertical Developer will pay Port the Purchase Price as follows:

(a) **Deposit**. Vertical Developer shall deliver within two (2) business days after Vertical Developer's execution of this Agreement an earnest money deposit of One Million and 00/100 Dollars ($1,000,000.00) (the "**Deposit**") into escrow with Chicago Title Company (the "**Title Company**" or "**Escrow Agent**").

(b) The Deposit is non-refundable to Vertical Developer except (i) as set forth in ***Sections 6.3(b)***, ***6.5(b), 7.2, 8.1***, ***8.3, 10.2*** and ***10.4*** and (ii) in the event the Port VDDA Execution does not occur within 65 days after Vertical Developer's execution of this Agreement. The Deposit will be credited against the Purchase Price at Closing. The Deposit will be held in an interest-bearing account, and all interest thereon will be deemed a part of the Deposit. Vertical Developer will pay the Purchase Price less the Deposit (including interest thereon) to Port at the consummation of the purchase and sale contemplated hereunder (the "**Closing**" or the "**Close of Escrow**").

(c) **Independent Consideration**. Notwithstanding any provision of this Agreement to the contrary, upon any early termination of this Agreement where Vertical Developer is entitled to a refund of the Deposit, the Escrow Agent will deduct from the Deposit the sum of One Thousand and 00/100 Dollars ($1,000.00) (the "**Independent Contract Consideration**") and deliver such Independent Contract Consideration to Port, which amount the parties bargained for and agree to as consideration for Vertical Developer's right to inspect and purchase the Property pursuant to this Agreement and for Port's execution, delivery and performance of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is nonrefundable, and is fully earned and will be retained by Port notwithstanding any other provision of this Agreement.

3. CONDITIONS OF TITLE.

3.1. *Permitted Encumbrances*.

(a) Permitted Exceptions. At the Close of Escrow Port, through the City, will convey City's interest in and to the Property to Vertical Developer by quitclaim deed in the form of ***Exhibit C*** attached hereto (the "**Deed**"), subject only to the following: (i) Permitted Port Title Exceptions (as defined below); (ii) all items of which Vertical Developer had actual notice or knowledge of as of the Effective Date (subject to the provisions of ***Section 6.3*** with respect to a Port Title Defect); (iii) this Agreement and the Memorandum of this Agreement; (iv) CFD Matters attached hereto as Schedule 3.1 and the Agreement to Comply with CFD Matters; (v) Development Easements complying with the provisions of ***Section 3.4(a)***, (vi) Vertical Developer Restrictive Covenants, (vii) Residential Condominium Unit Owners Restrictive Covenants, (viii) Notice of Transfer Fee Covenant, and (ix) the Transfer Fee Covenant ((i-ix) collectively, "**Permitted Encumbrances**"), and otherwise free and clear of (1) rights of possession by others and rights of possession of Port, (2) liens, encumbrances, covenants, assessments, easements, leases, licenses or other use agreements, and taxes, and (3) title policy exceptions as to any purchase option rights of any third party.

(b) Permitted Port Title Exceptions. For purposes of this Agreement, the following will constitute "**Permitted Port Title Exceptions**":

(i) Each matter affecting title to the Property disclosed by the Pro Forma Title Policy dated as of January 10, 2019 and attached hereto as ***Exhibit S***, and not otherwise objected to by Vertical Developer prior to the Effective Date pursuant to Vertical Developer's title objection notice dated January 9, 2019, as amended by that certain letter dated January 15, 2019;

(ii) The lien of ad valorem real estate taxes, special taxes and assessments not yet delinquent as of the date of Closing, subject to proration as herein provided;

(iii) Laws, including but not limited to building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;

(iv) The customary printed exceptions and exclusions contained in title insurance policies;

(v) Matters caused by or on behalf of Vertical Developer or its Agents; and

(vi) Matters not identified in the Preliminary Title Report but disclosed by the Title Company and approved by Vertical Developer after the Effective Date but prior to Close of Escrow.

(c) Horizontal Documents. Vertical Developer acknowledges and agrees that Horizontal Developer has the right and obligation under the Horizontal DDA, the Master Lease, and other documents contemplated in such agreements (collectively, the "**Horizontal Documents**") to construct and complete Horizontal Improvements including new 20th and 21st Streets east of Illinois Street and connections in Michigan Street to the Switchgear Facilities. Vertical Developer acknowledges and agrees that (i) Port and Horizontal Developer may amend or modify the Horizontal Documents without Vertical Developer's prior consent, provided that Port shall provide Vertical Developer with notice and an opportunity to comment on any changes to the Horizontal Documents affecting that portion of 20th and 21st streets east of Illinois Street and west of Michigan Street, (ii) subject to ***Section 3.4***, prior to Closing, Port may record or cause to be recorded Development Easements on the Property (which are reasonably acceptable to Vertical Developer as further provided in ***Section 3.4***) to advance the development of the PKN Horizontal Improvements and the Horizontal Improvements, and (iii) subject to ***Section 3.1(d)***, prior to Closing, Port may make adjustments to the legal description of the Property to exclude any portion thereof that is or is intended to become a right-of-way as the development of the

Property and the 28-Acre Site advances. Vertical Developer further agrees and acknowledges that because Port is not performing any of the Horizontal Improvements including any that may affect Vertical Developer's ability to commence and complete construction of the PKN Project, Vertical Developer will reasonably work and cooperate with the Horizontal Developer to agree on any schedule of performance for the completion of any portion of the Horizontal Improvements and other improvements that may impact Vertical Developer's ability to commence and complete construction of the PKN Project.

(d) Modifications to Legal Description of Property. Vertical Developer acknowledges and agrees that minor modifications to the boundaries of the Property may be required to accommodate existing and proposed rights-of-way as development of the Property and the 28-Acre Site, including construction of 20th Street and 21st Street. Accordingly, prior to the Close of Escrow, Port may request that Vertical Developer consent to any such minor modification, such consent not to be unreasonably withheld, conditioned or delayed so long as the modification (i) will not materially and adversely affect Vertical Developer's intended development (including, without limitation, costs, expenses and schedule), use or operation of the Property and the Vertical Project as reasonably determined by Vertical Developer; and (ii) is consistent with the SUD or Design for Development in all material respects. ***Section 13.13*** (Post Closing Boundary Adjustments) addresses boundary adjustments after Close of Escrow.

(e) McEnerney Action. Port shall pursue with reasonable diligence, at Port's cost and expense (without limiting any Port right to reimbursement under the Horizontal DDA), the completion of the quiet title action commenced by the Port as of September 13, 2018 pursuant to the so-called McEnerney Act (the "**McEnerney Action**") and to record the final judgement in the McEnerney Action so as to permit removal of all title exceptions relating to the subject matter thereto on or before August 31, 2019, which date is the anticipated date for completion of the McEnerney Action provided that no claim has been raised during the publication period ending January 31, 2019.

3.2.*Vertical Developer's Compliance Requirements* . Vertical Developer acknowledges and agrees that Port would not Deliver the Property unless Vertical Developer agreed, among other things, to comply (a) in all material respects with the obligation to construct the PKN Project in accordance with the terms of this Agreement, (b) with the CFD Matters further described in ***Section 3.3***, (c) with the "**Vertical Developer Restrictive Covenants**", attached hereto as ***Exhibit C-1A*** pertaining to Vertical Developer's use and operation of the Property, (d) the restrictions further described in ***Section 3.3(a) and (b)*** below, (e) with the "**Transfer Fee Covenant**" attached hereto as ***Exhibit C-2B***, and (f) with the obligation to develop the PKN Project that complies in all material respects with the Scope of Development attached hereto as ***Exhibit B*** (the "**Scope of Development**").

3.3.*CFD Matters and Shortfall Provisions*.

(a) CFD Matters. Vertical Developer will comply with all of the covenants and acknowledgements set forth in ***Schedule 3.1*** attached hereto (CFD Matters), which covenants and acknowledgements will be recorded against title to the Property and survive Close of Escrow in the form attached as ***Attachment 1*** to ***Schedule 3.1*** ("**Agreement to Comply with CFD Matters**").

(b) Shortfall Provisions.

(i) *Vertical Developer Waiver and Covenant*. Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Property until the IFD Termination Date. In addition, Vertical Developer covenants that should Vertical Developer initiate a Reassessment in violation of the waiver in this Section, and subject to ***Section 3.3(b)(ii)*** (Circumstances Causing Shortfall), Vertical Developer and Port will take the following measures to avoid shortfalls:

(1) Vertical Developer will pay Port the Assessment Shortfall within 20 days after Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(2) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates:

(1) the applicable IFD Termination Date; and
(2) when the Assessment Shortfall is reduced to zero.

(ii) *Circumstances Causing Shortfall*. This Section will apply if Vertical Developer initiates a Reassessment on the Property in violation of ***Section 3.3(b)(i)*** (Vertical Developer Waiver and Covenant).

(iii) *Tax Exemption*. Vertical Developer and Port do not intend for this ***Section 3.3(b)*** to affect the tax-exempt status of any bonds. Should the Tax Code change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt bonds to be deemed taxable due to the requirements under this Section, Port will release the obligations under this Section and it will be deemed severed from this Agreement.

(iv) *Mutual Expectations as to Shortfall Measures*. Neither Vertical Developer nor Port expects Port to make demand for payment under this ***Section 3.3(b)***. In light of the Parties' mutual expectations, Vertical Developer has agreed to the waiver in ***Section 3.3(b)(i)*** (Vertical Developer Waiver and Covenant).

(v) *Not Applicable to Condominium Unit Owners*. The provisions of this ***Section 3.3*** shall not be applicable to any purchaser or owner of a Condominium Unit.

(c) **No Negotiation**. Vertical Developer understands that Port would not be willing to enter into this Agreement without this ***Section 3.3***.

3.4.*Reservation of Easements; Grant of Easements at Closing*.

(a) **Development Easements, Generally**. Before the Close of Escrow, in order to facilitate the development of the Horizontal Improvements and the PKN Horizontal Improvements, Port has the right, subject to the limitations set forth below, to grant, convey or dedicate easements, and similar rights on and over the Property to utility companies, local water and sewer districts, the City, and other entities that provide utility or similar service to the Property or properties located adjacent thereto (the types of easements and similar rights described in the foregoing are, collectively, referred to herein as "**Development Easements**"); provided, however, before Port records, grants, conveys or dedicates any Development Easements hereunder, Port will furnish Vertical Developer with a copy of the proposed Development Easements for Vertical Developer's review and approval which approval will not be unreasonably withheld, conditioned or delayed so long as the proposed Development Easements (A) will not adversely affect Vertical Developer's intended development, use or operation of the Property or the Vertical Project as reasonably determined by Vertical Developer, (B) are consistent with the SUD or Design for Development in all material respects, and (C) are in form and substance reasonably acceptable to Vertical Developer. Vertical Developer will approve or disapprove any proposed Development Easement that requires Vertical Developer's prior approval within twenty (20) days following its receipt thereof; if Vertical Developer fails to approve or disapprove the applicable Development Easement within such twenty (20) day period, Port may submit to Vertical Developer a second written request for approval. If Vertical Developer fails to approve or disapprove the applicable proposed Development Easement within ten (10) days after Port's second written request for approval, Vertical Developer will be deemed to have approved the proposed applicable Development Easement.

(b) **Vault Infrastructure Easement**. In coordination with Port, Vertical Developer will use commercially reasonable efforts to negotiate and enter into before Close of

Escrow a temporary easement (the "**Vault Infrastructure Easement**") with and in favor of the SFPUC for the operation and maintenance of infrastructure connecting vaults (the "**Vault Infrastructure**") between Michigan Street and the PKN Improvement Area in a form and substance reasonably acceptable to Vertical Developer and SFPUC. The Vault Infrastructure Easement shall expire upon the earlier of (i) determination by the Parties that the Vault Infrastructure is not located on the Property or (ii) removal of the Vault Infrastructure from the Property by Vertical Developer in accordance with the Scope of Development.

3.5.*Transportation Management Association*. In order to comply with the Mitigation Monitoring and Reporting Program, Vertical Developer acknowledges that Vertical Developer is obligated to participate in a Transportation Management Association (the "**TMA**") to implement and administer the Transportation Demand Management Program (as referenced in the Mitigation Monitoring and Reporting Program) for the SUD Project. Vertical Developer will be responsible for all TMA assessments that may be owing with respect to the Property following the Close of Escrow. Vertical Developer will reasonably cooperate with Horizontal Developer as necessary to create, maintain and fund the TMA.

3.6.*Vertical Developer's Responsibility for Title Insurance*. Vertical Developer understands and agrees that the right, title and interest in the Property will not exceed that vested in Port or the City, and Port is under no obligation to furnish any policy of title insurance in connection with this transaction, provided, however, that Port shall be obligated to provide those documents reasonably requested by the Title Company that are in accordance with Port's past practices, including the "**Owner's Affidavit**" substantially in the form attached hereto as ***Exhibit T***. Vertical Developer recognizes that any fences or other physical monument of the Property's boundary lines may not correspond to the legal description of the Property. Port will not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate Survey or inspection might reveal. It is Vertical Developer's sole responsibility to obtain a Survey from an independent surveyor and a policy of title insurance from the Title Company.

4. INDEPENDENT INVESTIGATION; "AS IS" CONDITION; RELEASE OF PORT; PORT COVENANTS.

4.1.*Vertical Developer's Independent Investigation*. Vertical Developer represents and warrants to Port that Vertical Developer has performed an inspection and investigation of each and every aspect of the Property, either independently or through agents of Vertical Developer's choosing, including, without limitation, the following matters (collectively, the "**Property Conditions**"):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of Port's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the Property's compliance with or applicability of all Laws and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements, environmental permits and building and fire codes.

(c) The quality, nature, adequacy and physical condition in, on, around, under, and pertaining to the Property, including all other physical and functional aspects in, on, around, under, and pertaining to the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition in, on, around, under, and pertaining to the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property.

(e) The suitability in, on, around, under, and pertaining to the Property for Vertical Developer's intended uses or the development of the Vertical Project. Vertical Developer represents and warrants that its intended use of the Property is a for-sale residential condominium project, provided, however, that Vertical Developer may operate the Vertical Project as a residential rental project subject to the limitations set forth in ***Section 14.3***.

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting, in, on, around, under, and pertaining to the Property, including its development and use contemplated under this Agreement.

4.2.*Property Disclosures*. California law requires owners to disclose to buyers or lessees the presence or potential presence of certain Hazardous Materials. Accordingly, Vertical Developer is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, any chemical identified as a "constituent of concern" in the Pier 70 Risk Management Plan, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Property, which are described in the Pier 70 Risk Management Plan, copies of which have been delivered to or made available to Vertical Developer. By execution of this Agreement, Vertical Developer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

Vertical Developer acknowledges that Port has disclosed the matters relating to the Property referred to in ***Schedule 4.2*** attached hereto. Nothing contained in such schedule will limit any of the provisions of this Article or relieve Vertical Developer of its obligations to conduct a diligent inquiry hereunder, nor will any such matters limit any of the provisions of ***Section 4.3*** or ***Section 4.4***.

4.3."***As Is With All Faults***"; Disclaimer of Representations and Warranties. VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT PORT IS SELLING AND VERTICAL DEVELOPER IS PURCHASING PORT'S INTEREST IN THE PROPERTY ON AN "**AS IS WITH ALL FAULTS**" BASIS. VERTICAL DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION OF THE PROPERTY AND THE PKN IMPROVEMENT AREA. VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, INCLUDING ITS PORT, NOR ANY OF THE OTHER CITY PARTIES, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO ANY MATTERS CONCERNING THE PROPERTY, THE SUITABILITY OR FITNESS OF THE PROPERTY OR THE APPURTENANCES TO THE PROPERTY FOR THE VERTICAL PROJECT OR THE VERTICAL DEVELOPER'S INTENDED USES OR OPERATION OF THE PROPERTY, TITLE MATTERS, OR ANY OF THE PROPERTY CONDITIONS, THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, THE PROPERTY'S COMPLIANCE WITH LAWS, INCLUDING ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS RELATING TO THE PROPERTY, THE VERTICAL PROJECT, OR ANY MATTER AFFECTING THE USE, VALUE, OR OCCUPANCY IN THE VERTICAL PROJECT, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PROPERTY OR THE PROPOSED VERTICAL PROJECT.

4.4.*Release of City and Port*. As part of its agreement to purchase the Property in its "**As Is With All Faults**" condition, Vertical Developer, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges, the California State Lands Commission, City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including,

without limitation, Port, and all of their respective officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns (collectively, the "**City Parties**" and individually, "**City Party**"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, Attorneys' Fees and Costs), whether direct or indirect, known or unknown, foreseen or unforeseen (collectively, "**Claims**"), that Vertical Developer may now have or that may arise on account of or in any way be connected with (i) the suitability of the Property for the development of the Vertical Project or Vertical Developer's and its Agents and customer's past, present and future use of the Property, (ii) title matters, or any of the property conditions, the legal, physical, geological or environmental condition of the Property (including soil and groundwater conditions), including, without limitation, any Hazardous Material in, on, under, above or about the Property, (iii) any Laws applicable thereto, including, without limitation, Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (v) construction impacts from the Horizontal Improvements, delay in completion of or failure to complete the Horizontal Improvements, defects in the Horizontal Improvements, and any other matter related to Horizontal Improvements, (vi) construction impacts from the Historic Core Project or the 28-Acre Site Project, delay in completion of or failure to complete the Historic Core Project or the 28-Acre Site Project, and any other matter related to the Historic Core Project or the 28-Acre Site Project, and (vii) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Property or the Vertical Project, including all Claims arising from the joint, concurrent, active or passive negligence of any of City Parties, but excluding any intentionally harmful acts committed solely by Port or City. Vertical Developer, its successors and assigns, assume the risk that the Horizontal Improvements, the Historic Core Project, and/or the 28-Acre Site Project will not be completed. The Vertical Developer's release and waiver under this ***Section 4.4*** shall not apply to (a) any Claims resulting from the gross negligence or willful misconduct of any of City Party or (b) any third-party tort Claims arising prior to the Close of Escrow.

In addition, Port shall not be released from Claims resulting from (a) Port's breach of ***Section 8.3*** arising prior to the Close of Escrow of which Vertical Developer did not have actual notice or knowledge prior to the Close of Escrow, for which Vertical Developer's sole and exclusive remedy shall be as set forth in ***Section 8.3***, and (b) any Claims resulting from Port's breach of (x) Port's obligations under (A) ***Section 3.1(e)*** (for which Vertical Developer's sole and exclusive remedy shall be specific performance), and (B) ***Sections 9.2*** and ***25.9*** (for which Vertical Developer's sole and exclusive remedy shall be as set forth in ***Sections 9.2*** and ***25.9***, respectively) and (y) of any reimbursement or payment obligations under the Financing Plan, for which the source of funds for any breach of a reimbursement or payment obligation under the Financing Plan by Port to Vertical Developer will be limited solely to the sources of funds available under the Financing Plan for reimbursement to Vertical Developer and such liability, if any, will be capped by the actual amount owed to Vertical Developer under the Financing Plan, plus the Interest Cost permitted in the Financing Plan for such amount owed

Vertical Developer expressly acknowledges and agrees that the amount payable or expended by Vertical Developer hereunder does not take into account any potential liability of the City Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Agreement in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the City Parties, and Vertical Developer expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Vertical Developer or other waivers contained in this Agreement and as a material part of the consideration of this Agreement, Vertical Developer fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the City Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, the City Parties arising out of this Agreement or the uses authorized hereunder, including, any

interference with uses conducted by Vertical Developer pursuant to this Agreement regardless of the cause, and whether or not due to the negligence of the City Parties.

Vertical Developer understands and expressly accepts and assumes the risk that any facts concerning the Claims released, waived, and discharged in this Agreement includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the Claims released, waived, and discharged in this Agreement, Vertical Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BY PLACING ITS INITIALS BELOW, VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

INITIALS: VERTICAL DEVELOPER:_____

4.5.*Survival*. The provisions of this ***Article 4*** will survive the expiration or earlier termination of this Agreement.

5. PRE-CLOSING COVENANTS.

5.1.*Intentionally Omitted*.

5.2.*Transfer and Subdivision Maps*.

(a) Horizontal Developer has filed an application entitled Tentative Transfer Map No. 9597, to create Map Act compliant parcels on Parcel K North as approved on November 21, 2018. The Final Transfer Map will be submitted by Horizontal Developer, in consultation with Port, to conclude the task, and will be subject to approval by the Board of Supervisors. Port will provide Vertical Developer a copy of the Final Transfer Map. Vertical Developer's approval shall be required if any changes to the draft Final Transfer Map dated as of January, 2019 and attached hereto as ***Exhibit U*** would, in Vertical Developer's reasonable discretion, materially and adversely affect the development of the Property.

(b) From and after the Effective Date and prior to the Close of Escrow, Vertical Developer, at is sole cost and expense, will become Port's co-applicant to Tentative Subdivision Map No. 9596 for the Property (the "**PKN Tentative Map**"); provided, however, Vertical Developer will not cause or permit the recordation of a PKN Final Map prior to the Close of Escrow. Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to process the PKN Tentative Map and the PKN Final Map in accordance with the terms of ***Section 13.10(b)***. Vertical Developer agrees not to submit any Subdivision Map for review and approval under the Subdivision Code without Port's prior consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Recognizing that Horizontal Developer may construct underground electrical utility infrastructure for the 28-Acre-Site Project under Michigan Street, Vertical Developer must submit a substantially complete application for the PKN Tentative Map by November 1, 2019 to facilitate any such improvements on Michigan Street.

5.3.*Regulatory Approvals for PKN Project*. From and after the Effective Date and prior to the Close of Escrow, Vertical Developer will have the right, but not the obligation, at its sole cost and expense, to pursue Regulatory Approvals for the PKN Project including, without limitation, conceptual design approval under the SUD; provided, however, Vertical Developer will not cause or permit the issuance of any such Regulatory Approval prior to the Close of Escrow without the approval of Port, in its sole discretion, if the same would be binding upon Port. Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to process such Regulatory Approvals in accordance with the terms of ***Section 13.10(b)***.

6. CONDITIONS PRECEDENT TO CLOSING OF ACQUISITION.

6.1.*Intentionally Omitted*

6.2.*Vertical Developer's Right to Terminate; Return of Deposit.* If Vertical Developer elects to terminate this Agreement in accordance with ***Section 6.3(b)***, ***Section 6.5(b)***, ***Section 7.2***, ***Section 8.1, Section 8.3, Section 10.2***, or ***Section 10.4(a)*** then the Deposit, less the Independent Contract Consideration, will be returned promptly to Vertical Developer upon notice thereof to Escrow Agent, Vertical Developer will have no further remedies against Port and, except for any provisions of this Agreement which expressly state that they will survive the termination of this Agreement, this Agreement will be terminated and canceled in all respects and neither Vertical Developer nor Port will have any further rights or obligations hereunder. If Vertical Developer does not terminate this Agreement in accordance with this ***Section 6.2***, or if Vertical Developer waives its right to terminate this Agreement, (i) this Agreement will remain in full force and effect and Vertical Developer will have no further right to terminate this Agreement, and (ii) Vertical Developer will be deemed to have waived any liability of Port and any right to refuse to consummate the Close of Escrow by reason of any condition known to Vertical Developer as of the Effective Date.

6.3.*Title Review*.

(a) If at the time scheduled for Close of Escrow any (i) possession by others, (ii) rights of possession other than those of Vertical Developer, or (iii) lien, encumbrance, covenant, assessment, easement, lease, tax or other matter which is not disclosed on the Preliminary Title Report or not previously approved by Vertical Developer, encumbers the Property and would, in Vertical Developer's reasonable discretion, materially and adversely affect the development of the Property ("**Port Title Defect**"), Port will have up to thirty (30) days from the date scheduled for Close of Escrow to remove the Port Title Defect. The Close of Escrow will be extended to the earlier of seven (7) business days after the date on which the Port Title Defect is removed or the expiration of such thirty (30) day period. If the Port Title Defect can be removed by bonding, and such bonding is reasonably acceptable to Vertical Developer, and Port has not so bonded within the thirty (30) day period, Vertical Developer may, but will not be obligated to, cause a bond to be issued at Port's sole cost and expense. If Vertical Developer causes a bond to be issued in accordance with this ***Section 6.3(a)***, Port will reimburse Vertical Developer for the cost of such bond within thirty (30) days of demand or, at Port's option, credit such amount against the Purchase Price payable to Port under this Agreement.

(b) If at the expiration of the thirty-day extension to the scheduled Close of Escrow, a Port Title Defect still exists, Vertical Developer may by written notice to Port either (i) terminate this Agreement and receive a return of the Deposit or (ii) accept Delivery of the Property. If Vertical Developer accepts Delivery of the Property subject to a Port Title Defect, the Port Title Defect will be deemed waived. If Vertical Developer does not accept Delivery of the Property and fails to terminate this Agreement within seven (7) days after the extended date for the Close of Escrow, Port may terminate this Agreement upon three (3) days written notice to Vertical Developer, and Vertical Developer shall receive a return of the Deposit. If the Agreement is terminated under this Section the terms of ***Section 6.2*** shall apply.

6.4.*Port's Conditions Precedent*.

(a) Port's Conditions Precedent. The following are conditions precedent to Port's obligation to consummate the Close of Escrow and thereby Deliver the Property to Vertical Developer:

(i) The Board of Supervisors' authorization and approval, by resolution, of the Transaction Documents, has been completed and has become and remains effective, and such approval shall be Finally Granted.

(ii) Either (A) a Transfer Map creating the Property as a separate legal parcel under the California Subdivision Map Act and the City's Subdivision Code has been recorded in the Official Records, or (B) the County Surveyor has issued a certificate of compliance or conditional certificate of compliance identifying the Property as a separate parcel that may be sold, leased or financed without further compliance with the California Subdivision Map Act and the City's Subdivision Code.

(iii) Vertical Developer will have performed in all material respects (as reasonably determined by Port) all obligations under this Agreement required to be performed on its part before the Close of Escrow, no uncured Acquisition Event of Default will exist on Vertical Developer's part under this Agreement and all of Vertical Developer's representations and warranties made in ***Section 25.4*** will have been true and correct in all material respects when made and will be true and correct in all material respects as of the Close of Escrow. At the Close of Escrow, Vertical Developer will deliver to Port a certificate to confirm the accuracy of such representations and warranties, substantially in the form attached hereto as ***Exhibit D***.

(iv) Vertical Developer will have deposited into Escrow, the balance of the Purchase Price, and all other sums necessary to consummate the Close of Escrow pursuant to the terms of this Agreement.

(v) Vertical Developer will have deposited into Escrow each of the documents described in ***Section 7.3(b)***, each duly executed and acknowledged by Vertical Developer.

(vi) Vertical Developer will have deposited into Escrow the Port/City Costs Payment payable by Vertical Developer.

(vii) Vertical Developer and Port will have executed mutual irrevocable instructions to the Escrow Agent, all in accordance with ***Article 7***.

(viii) Vertical Developer will have executed and delivered to Port a certification of compliance with San Francisco Administrative Code Chapters 12B and 12C on the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101), together with supporting documentation, and will have secured approval of the form by the City's Human Rights Commission.

(ix) Vertical Developer will have deposited into Escrow such evidence of authority to enter into this Agreement and any other Transaction Documents, as Port and the Title Company may reasonably require (including certificates of good standing, board resolutions and certificates of incumbency).

(x) Vertical Developer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency pursuant to applicable Law pertaining to qualifications for government contracting qualifications.

(b) Satisfaction of Port's Conditions. The conditions precedent set forth in ***Section 6.4(a)*** are intended solely for the benefit of Port. If any such condition precedent is not satisfied on or before the Closing Date, Port's Executive Director, or, if the Executive Director determines that waiver of the condition precedent materially affects the rights, obligations, or

expectations of Port, the Port Commission, by resolution, will have the right in its sole discretion either to waive in writing the condition precedent in question and proceed with the Close of Escrow, or, in the alternative, to terminate this Agreement.

6.5.*Vertical Developer's Conditions to Closing*.

(a) Vertical Developer Conditions Precedent. The following are conditions precedent to Vertical Developer's obligation to consummate the Close of Escrow and accept the Property from Port under this Agreement:

(i) Port will have performed in all material respects (as reasonably determined by Vertical Developer) all obligations under this Agreement which Port is required to perform before the Close of Escrow and there is no Acquisition Event of Default by Port.

(ii) The Title Company is irrevocably committed to issue to Vertical Developer, upon payment by Vertical Developer, a title insurance policy satisfactory to Vertical Developer, insuring Vertical Developer's interest in the Property subject only to Permitted Encumbrances.

(iii) Port will have deposited into escrow (or caused City to deposit) each of the documents described in ***Section 7.3(a)***, each duly executed and acknowledged by Port and/or City, as applicable.

(iv) The Board of Supervisors' authorization and approval, by resolution, of the Transaction Documents, has been completed and has become and remains effective, and such approval shall be Finally Granted.

(v) A Transfer Map creating the Property as a separate legal parcel under the California Subdivision Map Act and the City's Subdivision Code has been recorded in the Official Records.

(vi) Intentionally Omitted.

(vii) Vertical Developer and Port will have executed mutual irrevocable instructions to the Escrow Agent, all in accordance with ***Article 7***.

(viii) Vertical Developer shall have received a determination reasonably satisfactory to Vertical Developer from the Planning Department that SUD Planning Code Section 249.79(l) "Review Approval of Development Phase and Horizontal Development" shall not apply to the PKN Project, and the PKN Project shall not require any Phase Approval or related hearings or presentations under that section prior to consideration or approval by the Planning Director or the Port of the PKN Project pursuant to SUD Planning Code Section 249.79(l).

(ix) Any operation, maintenance or service agreement for the Property will have been terminated by the Port as of the Close of Escrow at the sole cost and expense of the Port.

(x) No party shall have joined the McEnerney Action nor raised any claims to title prior to the end of the publication period.

(b) Satisfaction of Vertical Developer's Conditions Precedent. The conditions precedent set forth in ***Section 6.5(a)*** are intended solely for the benefit of Vertical Developer. If any such condition precedent is not satisfied on or before the Close of Escrow, Vertical Developer will have the right in its sole discretion to waive in writing the condition precedent in question and proceed with the Close of Escrow and acceptance of the Property under this Agreement, or, in the alternative, to terminate this Agreement. Notwithstanding the foregoing, Vertical Developer will not be entitled to a return of the Deposit from a failure of the condition set forth in ***Section 6.5(a)(ii)*** if such failure is a result of Vertical Developer's failure to (i) pay the premium for such title policy or (ii) provide the title company with Vertical

Developer's organizational and authority documents customarily required by title companies to issue an owner's title policy.

6.6.*Taxes and Assessments*.

(a) Ad Valorem Taxes and Assessments Before and After Close of Escrow. For any period from the Effective Date to the Close of Escrow, Vertical Developer is responsible for the payment of any ad valorem taxes (including possessory interest and special taxes) assessed by reason of this Agreement. Ad valorem taxes and assessments levied, assessed, or imposed for any period from and after the Close of Escrow, including possessory interest and special taxes, are the sole responsibility of Vertical Developer.

(b) Possessory Interest Taxes. Vertical Developer recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Vertical Developer may be subject to the payment of property taxes levied on such interest. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City report certain information relating to this Agreement, and any renewals of this Agreement, to the County Assessor within sixty (60) days after any such transaction, and that Vertical Developer report certain information relating to any assignment under this Agreement to the County Assessor within sixty (60) days after such assignment transaction. Vertical Developer agrees to provide such information as may be requested by Port to enable Port to comply with this requirement.

(c) Right to Contest. Subject to ***Section 3.3, Section 12.1, Section 12.2,*** and ***Section 12.4***, and the matters described therein, Vertical Developer has the right to contest the amount, validity or applicability, in whole or in part, of any ad valorem, possessory interest or other taxes and assessments levied on Vertical Developer or the Property by reason of this Agreement (collectively, "**Taxes and Assessments**") by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, prior to commencement of such contest, Vertical Developer notifies Port of such contest. Vertical Developer must notify Port of the final determination of such contest within fifteen (15) days after such determination. Subject to ***Section 3.3***, nothing in this Agreement requires Vertical Developer to pay any Taxes and Assessments so long as Vertical Developer contests the validity, applicability or amount of such Taxes and Assessments in good faith, and so long as it does not allow the portion of the Property affected by such Taxes and Assessments to be forfeited to the entity levying such Taxes and Assessments as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Vertical Developer must comply with such requirement as a condition to its right to contest. Vertical Developer is responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Vertical Developer must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Property may be subjected to such lien or claim. Vertical Developer is not required to pay any Taxes and Assessments being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Property. Port will not be subjected to any liability for the payment of any fines or penalties, and except as provided in the preceding sentence, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. Notwithstanding the foregoing, from and after the Close of Escrow, subject to ***Section 3.3*** and the matters described therein, Vertical Developer's right to contest Taxes and Assessments will be absolute and, without limiting the generality of the foregoing, in no event will Vertical Developer be obligated to notify or provide security to Port nor will Port have a right to participate.

(d) Survival. This ***Section 6.6*** will survive the expiration or earlier termination of this Agreement.

7. ESCROW AND CLOSING.

7.1.*Escrow*. Vertical Developer and Port will deposit an executed counterpart of this Agreement with the Title Company. Port and Vertical Developer will deposit escrow instructions as appropriate to enable the Escrow Agent to comply with the terms of this Agreement. In addition, Port will deposit supplementary escrow instructions instructing Escrow Agent to apply all funds received by it in accordance with the requirements of the Horizontal Documents. In the event of any conflict between the provisions of this Agreement and any escrow instructions or supplementary escrow instructions, the terms of this Agreement will control.

7.2.*Closing*. The Closing (or Close of Escrow) hereunder will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of the Title Company three (3) business days following the recordation of the Transfer Map, and satisfaction or waiver of the closing conditions set forth in ***Sections 6.4 and 6.5***, but no later than March 15, 2019 ("**Outside Closing Date**"), or such earlier date and time as Vertical Developer and Port may mutually agree upon in writing (the "**Closing Date**"). Such date and time may not be extended without the prior written approval of both Port and Vertical Developer, which may be withheld in each of their sole discretion. If the Closing does not occur on or before the Outside Closing Date, then either Port or Vertical Developer may terminate this Agreement and, provided that the failure of Closing to occur on or before the Outside Closing Date is not due to an act or omission of Vertical Developer, the Deposit (less the Independent Contract Consideration) shall be returned to Vertical Developer.

7.3.*Deposit of Documents*.

(a) **By Port**. At or before the Closing, Port will deposit into escrow the following items:

(i) the duly executed and acknowledged original of the Quitclaim Deed signed by Port and City conveying the Property to Vertical Developer subject to the Permitted Encumbrances;

(ii) two (2) duly executed and acknowledged originals signed by Port of a memorandum of this Agreement in the form of ***Exhibit E*** attached hereto (the "**Memorandum of VDDA**");

(iii) a duly executed owner's title affidavit signed by Port and City substantially in the form attached hereto as ***Exhibit T***;

(iv) two (2) duly executed and acknowledged originals signed by Port of the Notice of Transfer Fee Covenant and the Transfer Fee Covenant;

(v) two (2) duly executed and acknowledged originals signed by Port of the Agreement to Comply with CFD Matters;

(vi) two (2) duly executed originals signed by Port of the Delegation of Authority to Vote;

(vii) two (2) duly executed originals signed by Port of the Financing Plan;

(viii) a letter from an authorized City Attorney stating that Port is not aware of any breach by Port of the covenants set forth in ***Section 8.3***;

(ix) such documents reasonably requested by the Title Company that are in accordance with Port's past practices; and

(x) Board of Supervisors' resolution(s) evidencing Port and City's authority to consummate the transactions contemplated by this Agreement.

(b) **By Vertical Developer**. At or before the Closing, Vertical Developer will deposit into escrow the following items:

(i) two (2) duly executed and acknowledged originals signed by Vertical Developer of the Memorandum of VDDA;

(ii) the funds necessary to consummate the Close of Escrow;

(iii) two (2) duly executed and acknowledged originals signed by Vertical Developer of the Vertical Developer Restrictive Covenants;

(iv) two (2) duly executed and acknowledged originals signed by Vertical Developer of the Residential Condominium Unit Owners Restrictive Covenants;

(v) two (2) duly executed and acknowledged originals signed by Vertical Developer of the Notice of Transfer Fee Covenant and the Transfer Fee Covenant;

(vi) two (2) duly executed and acknowledged originals signed by Vertical Developer of the Agreement to Comply with CFD Matters;

(vii) Intentionally Omitted

(viii) Intentionally Omitted;

(ix) two (2) duly executed originals signed by Vertical Developer of the Delegation of Authority to Vote;

(x) two (2) duly executed originals signed by Vertical Developer of the Financing Plan;

(xi) two (2) duly executed and acknowledged originals signed by Vertical Developer of the Vault Infrastructure Easement, if applicable; and

(xii) evidence of authority to consummate the transactions contemplated by this Agreement, as the Title Company may reasonably require (including certificates of good standing, board resolutions and certificates of incumbency).

(c) **Further Assurances**. Port and Vertical Developer will each deposit such other instruments as are reasonably required by the Escrow Agent or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

7.4.*Steps to Close Escrow*. Port and Vertical Developer will instruct the Escrow Agent to consummate the escrow as provided herein and in the escrow instructions executed by Vertical Developer and Port. Upon the Close of Escrow, the Escrow Agent will record in the Official Records, in the following and no other order, the Deed, the Notice of Transfer Fee Covenant, the Transfer Fee Covenant, the Restrictive Covenants, the Memorandum of VDDA, the Agreement to Comply with CFD Matters, and any other documents reasonably required to be recorded under the terms of Regulatory Approvals. On or before (2) days prior to the Close of Escrow, Escrow Agent shall deliver to each of Port and Vertical Developer a draft buyer's and seller's settlement statement for review and approval by Vertical Developer and Port, as applicable. Upon Close of Escrow, Escrow Agent will deliver the settlement statement approved by Vertical Developer and Port to Port and Vertical Developer and deliver to Port all funds received by Escrow Agent on account of the Purchase Price. Port will instruct the Escrow Agent to disburse the net proceeds of the Purchase Price in accordance with Port's escrow instructions. In addition, the Title Company will issue an owner's title policy in the form approved by Vertical Developer to Vertical Developer as required under ***Section 3.6***.

7.5.*Waiver of Pre-Delivery Conditions*. Unless the Parties otherwise expressly agree at the time of Close of Escrow, all pre-Delivery conditions of the Parties will, upon Close of Escrow, be deemed waived by the Party benefited by such condition.

7.6.*Merger*. Upon the Close of Escrow, the terms set forth in ***Section 1*** through ***Section 10***, inclusive, of this Agreement will be deemed to have merged with the Deed and will be of no further force or effect, except (i) to the extent such term expressly survives the Close of Escrow pursuant to the terms thereof and (ii) the Claims that have not been waived or released by Vertical Developer as set forth in the second paragraph of ***Section 4.4***. For the avoidance of doubt, the terms of ***Section 11*** through ***Section 26***, inclusive, of this Agreement will survive the Close of Escrow.

8. RISK OF LOSS PRIOR TO CLOSING; OPERATION OF PROPERTY.

8.1.*Loss*. Prior to the Closing Date, Port will give Vertical Developer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event that all or any portion of the Property is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then Vertical Developer may, at its option to be exercised within ten (10) business days of Port's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement and receive its Deposit, or consummate the Delivery of the Property for the full Purchase Price, less any condemnation proceeds (or, if so elected by Vertical Developer, for the full Purchase Price; provided that Port pays to Vertical Developer or transfers its rights to any condemnation award proceeds attributable to the value of the Property to Vertical Developer at the Close of Escrow) as required by the terms hereof. If Vertical Developer elects to terminate this Agreement or fails to give Port notice within such ten (10) business day period that Vertical Developer will proceed with the purchase, then this Agreement will terminate at the end of such ten (10) business day period and the terms of ***Section 6.2*** will apply, including, without limitation a return of the Deposit to Vertical Developer.

8.2.*Insurance Proceeds and Awards*.

(a) <u>Insurance Proceeds</u>. Port will not be obligated to purchase any third party commercial liability insurance or property insurance with regard to the Property, and in no event will Port be obligated to transfer to Vertical Developer any insurance proceeds Port may receive or credit against or reduce the Purchase Price as a result of damage or destruction of the Property.

(b) <u>Condemnation Awards</u>. If Vertical Developer elects to consummate the Delivery of the Property for the full Purchase Price after condemnation of all or any a portion of the Property, Port will, at the election of Vertical Developer, transfer to Vertical Developer the condemnation award proceeds attributable to the value of the Property (but excluding all other amounts, including, but not limited to, attorneys' fees and costs) or credit such amounts against the Purchase Price.

8.3.*Operation of Property Pending Close of Escrow* Port agrees that prior to the earlier of the termination of this Agreement or the Close of Escrow:

(a) <u>Conveyance, etc.</u> Port shall not enter into new agreements to sell, convey, grant, assign, encumber or otherwise transfer (on or off record) the Property or any interest therein which would survive the Close of Escrow, without the prior written consent of Vertical Developer;

(b) <u>Physical Condition</u>. Port shall not alter the physical condition of the Property in a manner which would materially and adversely affect Vertical Developer's intended development of the Property (including, without limitation, costs, expenses and schedule), without the prior written consent of Vertical Developer;

(c) <u>Notices</u>. Port shall deliver to Vertical Developer all material notices or communications Port receives in writing from any governmental body or from Horizontal Developer pertaining to the Property (i) of violation or a pending or threatened (in writing)

litigation, or (ii) that would materially and adversely affect Vertical Developer's intended development (including, without limitation, costs, expenses and schedule), as determined by Port in its reasonable discretion.

If, prior to the Close of Escrow, Vertical Developer becomes aware, from Port or otherwise, of a breach of any of the covenants set forth in this ***Section 8.3***, Vertical Developer and Port shall attempt to resolve any issues arising from such breach. If Vertical Developer and Port are unable to resolve such issues, then Vertical Developer may either (i) terminate this Agreement and receive a return of the Deposit or (ii) proceed with the Close of Escrow and waive any claims against Port for any breach under this ***Section 8.3***. If the Close of Escrow occurs and subsequently Vertical Developer becomes aware, from Port or otherwise, of a breach of any of the covenants set forth in this ***Section 8.3***, the maximum monetary liability of Port for any damages incurred by Vertical Developer for such breach shall not exceed Three Hundred Fifty Thousand and 00/100 Dollars ($350,000.00) and the maximum total liability of the City for any damages incurred by Vertical Developer for such breach shall not exceed Six Hundred Thousand and 00/100 Dollars ($600,000.00) (through a combination of payment and offset) subject to the further limitations set forth in this paragraph. Vertical Developer shall only be entitled to seek actual monetary damages against Port for any claim of a breach of a covenant in this Section 8.3 if the remedy of specific performance is not available or would not provide a reasonably adequate remedy to redress any injury suffered by Vertical Developer for such breach. Payment of any monetary damages under this ***Section 8.3*** will be (a) in the form of a payment by Port to Vertical Developer in an amount of up to Three Hundred Fifty Thousand and 00/100 Dollars ($350,000.00) (the source of which will be the Port/City Costs Payment paid to Port at the Close of Escrow and held in a holdback escrow until Port shall have no further liability under this ***Section 8.3***) and (b) for any damages in excess thereof, payment will be in the form of an offset against Vertical Developer's obligation to pay to the SFPUC and PG&E, or Port, as applicable, the costs due under ***Section 12.7***). The payment of monetary damages, including the offset right for the payment obligations under ***Section 12.7***, is payable or subject to offset only following a final, unappealable judgment in a court of competent jurisdiction for such breach (or in the alternative, a proposed settlement) and following approval of the Port Commission, in its sole discretion, provided, however, that Port's Executive Director shall recommend that Port Commission approve Port's obligations to pay such damages and to offset Vertical Developer's payment obligations under ***Section 12.7***, as applicable. The right to bring any claim against the Port under this paragraph shall terminate six (6) months after the Close of Escrow; Port shall have no liability to Vertical Developer under this ***Section 8.3*** after such date. If specifically asserted in writing prior to the expiration of such six (6) month period, a claim for damages shall thereafter survive until resolved by mutual agreement between Port and Vertical Developer or as determined by a court of competent jurisdiction. Any claim for damages not so asserted in writing prior to the expiration of such six (6) month period shall not thereafter be asserted and shall forever be waived.

9. CLOSING EXPENSES.

9.1.*Expenses*. Vertical Developer will pay all fees, charges, costs and other amounts necessary for the opening and Close of Escrow (collectively, the "**Closing Costs**"), including (i) real property transfer taxes applicable to the Delivery of the Property, (ii) personal property transfer taxes, (iii) the cost of any title reports, surveys, inspections and premiums for all title insurance policies obtained by Vertical Developer, and if applicable, any lender, (iv) escrow fees and recording charges, and (v) any other costs and charges of the escrow for the transaction contemplated hereby. Vertical Developer will pay the Closing Costs upon the Close of Escrow. If the Title Company requires, Vertical Developer shall pay into Escrow any such fees, costs, charges or other amounts required for the Close of Escrow under this Agreement.

9.2.*Brokers*. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction other than Collier's International ("**Broker**") and that there are no other claims or rights for brokerage commissions

or finder's fees in connection with the transactions contemplated by this Agreement. Port will pay any brokerage commission or finder's fee due to Broker in connection with the transactions contemplated by this Agreement. If any person other than Broker brings a claim for a commission or finder's fee based on any contact, dealings, or communication with either Party, then such Party will defend the other Party from such claim, and will Indemnify the City Parties or Vertical Developer and its officers, employees, directors, owners, heirs, successors, legal representatives and assigns ("**Vertical Developer Parties**"), as applicable, from, and hold the City Parties or Vertical Developer Parties, as applicable, against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable Attorneys' Fees and Costs) that the City Parties or Vertical Developer Parties, as applicable, incur in defending against the claim. The provisions of this Section will survive the Closing, or, if the Delivery of the Property is not consummated for any reason, any termination of this Agreement.

10. ACQUISITION DEFAULTS, REMEDIES AND LIQUIDATED DAMAGES.

10.1. ***Acquisition Event of Default***. For purposes hereof, an "**Acquisition Event of Default**" means any of the following occurring prior to the Close of Escrow:

(a) Vertical Developer fails to pay when due, any amount required to be paid under this Agreement with respect to the acquisition of the Property, and such failure continues for a period of five (5) business days following Vertical Developer's receipt of written notice thereof from Port;

(b) Vertical Developer causes or permits the occurrence of a Transfer not permitted under this Agreement;

(c) All conditions to the Close of Escrow in the applicable Party's favor have been satisfied or waived, and such Party fails to consummate the Closing by the Closing Date in violation of this Agreement;

(d) On or before the Closing Date, Vertical Developer files a petition for relief, or an order for relief is entered against Vertical Developer, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Vertical Developer are not dismissed or stayed within one hundred eighty (180) days;

(e) On or before the Closing Date, a writ of execution is levied on this Agreement which is not released, bonded over or dismissed within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Vertical Developer, which appointment is not dismissed within one hundred twenty (120) days;

(f) On or before the Closing Date, Vertical Developer makes a general assignment for the benefit of its creditors; or

(g) The applicable Party violates any covenant set forth in ***Sections 1*** through and including ***Section 9*** of this Agreement, or fails to perform any other obligation to be performed by the party under ***Sections 1*** through and including ***Section 9*** of this Agreement at the time such performance is due, and such violation or failure continues without cure for more than fifteen (15) days after written notice from the other party specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such fifteen (15) day period, if such party does not within such fifteen (15) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

10.2. ***Failure to Close Escrow***. Subject to ***Section 10.3***, if due to an Acquisition Event of Default, Escrow cannot close on the date agreed to by the Parties, the non-defaulting Party may terminate this Agreement by written notice and demand the return of its money, papers or documents deposited in Escrow (including, in the case of Vertical Developer, the return of the

Deposit); provided, however, the defaulting Party will have ten (10) days after delivery of such termination notice to perform any acts required of it to permit Close of Escrow. If neither Party has performed fully to enable Close of Escrow by the time established therefor, then either Party may instruct the Title Company to return all documents and funds deposited with it to the applicable Parties in ten (10) days, unless within such ten (10) day period, both Parties perform fully all their obligations to enable Close of Escrow, in which case, the Title Company will proceed to the Close of Escrow without regard to such delay.

10.3. ***Default by Vertical Developer; Liquidated Damages***. IF THE DELIVERY OF THE PROPERTY IS NOT CONSUMMATED DUE TO AN ACQUISITION EVENT OF DEFAULT BY THE VERTICAL DEVELOPER HEREUNDER, PORT WILL BE ENTITLED, AS ITS SOLE AND EXCLUSIVE REMEDY, TO TERMINATE THIS AGREEMENT AND RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THE DELIVERY OF THE PROPERTY AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: PORT: _____ VERTICAL DEVELOPER: _____

10.4. ***Port Default; Vertical Developer's Remedies***. Upon the occurrence of an Acquisition Event of Default by Port and provided there is no Acquisition Event of Default by Vertical Developer, Vertical Developer has the exclusive remedies set forth below following the expiration of applicable cure periods:

(a) **Termination**. Vertical Developer may terminate this Agreement upon ten (10) days' written notice to Port, in which event the provisions of ***Section 6.2*** shall apply; or

(b) **Specific Performance**. Vertical Developer may institute an action for specific performance. Port acknowledges that an Acquisition Event of Default by Port under ***Section 10.1(c)*** will be conclusively deemed to be a breach of an agreement to transfer real property that cannot be adequately relieved by pecuniary compensation as set forth in California Civil Code § 3387.

(c) **Damages**. Except as specifically set forth in this ***Section 10.4(c)***, prior to the Close of Escrow, Port will not be liable to Vertical Developer for any monetary damages in connection with by any Acquisition Event of Default by Port and in no event will Port be liable for any actual, consequential, incidental or punitive damages; provided, however, if (i) Port is required under the terms of this Agreement to return the Deposit and Port fails to do so as required under this Agreement, then Vertical Developer may institute a cause of action for monetary damages equal to that portion of the Deposit that Port was required to return, that was not returned by Port, or (ii) transfers the Property (whether by fee or leasehold) to another party in violation of its obligations under this Agreement, then Vertical Developer may institute a cause of action for monetary damages, provided, however, Port's liability, if any, for such violation will not exceed an amount equal to the net sales proceeds received by Port from such fee sale or the net present value of the rent to be received by Port from such lease. The foregoing limitation on damages for any liability arising prior to the Close of Escrow shall not limit Vertical Developer's rights after the Close of Escrow under the last paragraph of ***Section 8.3***.

(d) No Other Remedies. Other than the remedies set forth in the second paragraph of ***Section 4.4***, the last paragraph of ***Section 8.3*** and under ***Sections 10.4(a)***, ***10.4(b)***, ***10.4(c)***, and ***25.9***, Vertical Developer is not entitled to any other remedies permitted by law or at equity for an Acquisition Event of Default.

11. COMPLIANCE WITH LAWS.

During the Term of this Agreement, Vertical Developer will comply with, at no cost to Port (except as may be otherwise provided for in the Financing Plan), all applicable Laws (taking into account any variances or other deviations properly approved and applicable to the PKN Project). The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. Vertical Developer acknowledges that the description of the PKN Project attached hereto does not limit Vertical Developer's responsibility to obtain Regulatory Approvals for the PKN Project, nor does it limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Vertical Developer's obligation to comply with Laws after the Close of Escrow includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Property that may be required by any Laws relating to or affecting the Property.

12. VERTICAL DEVELOPER POST-CLOSING OBLIGATIONS.

12.1. ***Payment of Services Special Taxes***. Vertical Developer acknowledges that the Services Special Tax (as defined in Schedule 3.1) shall be payable as to a phase of the Vertical Project commencing on July 1 in the year following the issuance of the first temporary certificate of occupancy applicable to such phase. Such Services Special Tax shall be calculated based upon the net saleable square feet of Vertical Project as described in Attachment 3 to the Pier 70 Condo CFD RMA, as it may be revised under the terms of the Pier 70 Condo CFD RMA (as defined in the Financing Plan, a draft of which Pier 70 Condo CFD RMA is attached as Exhibit C to the Financing Plan).

12.2. ***Payment of Facilities Special Taxes***. Vertical Developer acknowledges that the Facilities Special Tax (as defined in Schedule 3.1) shall be payable commencing on July 1 in the year following the third (3rd) anniversary of the Effective Date, irrespective of whether Vertical Developer has Commenced Construction of the PKN Project. Such Facilities Special Tax shall be calculated based upon the net saleable square feet of Vertical Project as described in Attachment 3 to the Pier 70 Condo CFD RMA, as it may be revised under the terms of the Pier 70 Condo CFD RMA.

12.3. ***Intentionally Omitted***.

12.4. ***Delegation of Authority to Vote***. If the City has not formed the Pier 70 Condo CFD (as defined in the Financing Plan) by the Closing Date, Vertical Developer hereby delegates to Port its authority to vote in any CFD Formation Proceedings (as defined in the Financing Plan) at an election scheduled by the Board of Supervisors to form the CFD consistent with the Financing Plan pursuant to the "Delegation of Authority to Vote" attached as ***Exhibit B*** to ***Schedule 3.1*** ("**Delegation of Authority to Vote**").

12.5. ***Notice of Special Tax***. After the CFD Formation Proceedings are final, Vertical Developer will deliver to Port an acknowledgment (the "**Notice of Special Tax**") in a form reasonably approved by Port confirming that Vertical Developer has been advised of the terms and conditions of the CFD, including that the Property is subject to the applicable special taxes.

12.6. ***Temporary Construction Easements***. After the Close of Escrow, Vertical Developer, in its reasonable discretion, will grant temporary construction easements in favor of Port, Horizontal Developer, any successor in interest of Horizontal Developer, and/or any developer of parcels adjacent to the Property, to facilitate the development of such adjacent parcels, which easements will authorize ingress, egress, repair, and other rights necessary for

construction. Any such easements would be subject to Vertical Developer's review and approval which approval will not be unreasonably withheld, conditioned or delayed so long as the proposed temporary construction easements (A) will not materially and adversely affect Vertical Developer's intended development, use or operation of the Property or the Vertical Project as reasonably determined by Vertical Developer, (B) are consistent with the SUD or Design for Development in all material respects, and (C) are in form and substance reasonably acceptable to Vertical Developer. This ***Section 12.6*** expressly survives termination of this Agreement.

12.7. ***Switchgear***. Vertical Developer will facilitate the installation by the San Francisco Public Utilities Commission (the "**SFPUC**") of two intervening switchgear facilities ("**Switchgear Facilities**"), either pad-mounted in Michigan Street Plaza ("**Switchgear Option 1**") or pole-mounted on Port property immediately south of that portion of the to-be-built 21st Street adjacent to PKN ("**Switchgear Option 2**", and, collectively with Switchgear Option 1, each a "**Switchgear Option**"), which location shall be determined by Port and SFPUC in their sole discretion. No later than sixty (60) days after the Close of Escrow, Port will notify Vertical Developer of Port and SFPUC's determination as to the location of the Switchgear Facilities. In the event Port and SFPUC elect Switchgear Option 1, Vertical Developer will construct a decorative screen/enclosure around the Switchgear Facilities, subject to Port's design approval as part of design of Michigan Street Plaza. Vertical Developer shall pay at its sole cost and expense up to Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00) in Hard Costs and Soft Costs (as defined in the Financing Plan) for Switchgear Option 1, with all additional costs reimbursed as PKN Capital Costs under the Financing Plan. In the event Port and SFPUC elect Switchgear Option 2, Vertical Developer will pay SFPUC and PG&E (without reimbursement) the lesser of (a) costs of relocating the existing temporary poles and pole-mounted Switchgear Facilities, or (b) $250,000. If additional sub-surface improvements, such as an extended dry utility trench, are required under the future 21st Street and along Michigan Street south of 21st Street in connection with Switchgear Option 2, these costs will be eligible PKN Capital Costs, subject to reimbursement as provided for in the Financing Plan. The design and location of underground electrical utility vaults and dry utility trenches in Michigan Street and, if required, under 21st Street, are subject to Port approval in its sole discretion, in consultation with the developer of the Historic Core Project and Horizontal Developer, in connection with the approval of the PKN Tentative Map. Notwithstanding the above, on or after October 1, 2019, if Vertical Developer has not been able to secure from Port, SFPUC, and PG&E approval of preliminary plans and written commitment to an approval and construction schedule in form and substance acceptable to Vertical Developer for the selected Switchgear Option 1 or Switchgear Option 2, then Vertical Developer may cease pursuing development of the selected Switchgear Option and instead apply to PG&E, at its own cost and expense (without any reimbursement) for approvals to underground the overhead electrical lines on Michigan Street adjacent to PKN, so long as such undergrounding will not adversely affect the future development of Switchgear Option 1 or Switchgear Option 2. Vertical Developer's determination to underground the overhead utilities will not release Vertical Developer of its obligation to pay the lesser of (a) $250,000 or (b) the actual cost for Switchgear Option 1 or Switchgear Option 2. Vertical Developer shall utilize the dry utility trench approved in connection with the PKN Tentative Map to underground the PG&E overhead wires; payments to PG&E to reimburse PG&E's cost of undergrounding wires shall be at Vertical Developer's sole cost and expense, and shall not be reimbursable as PKN Capital Costs under the Financing Plan. In the event work on a Switchgear Option has not commenced by the Port or SFPUC prior to receipt of the Substantial Completion Determination for the Michigan Street Plaza, subject to the provisions of the last paragraph of ***Section 8.3***, Vertical Developer shall pay Port a fee of $250,000 for the Switchgear Options (the "**Switchgear Fee**"), within thirty days of receipt of the Substantial Completion Determination for the Michigan Street Plaza. The Switchgear Fee shall be refunded to Vertical Developer within five years of Vertical Developer's payment of the Switchgear Fee if (a) neither Switchgear Option has been

constructed and (b) property within the SUD is served by a distribution line constructed by the SFPUC, referred to as the SFPUC Bay Corridor Transmission and Distribution Line.

12.8. ***Vertical Cooperation Agreement***. Prior to the Commencement of Construction, Vertical Developer will use commercially reasonable efforts to enter into a Vertical Cooperation Agreement (the "**VCA**") with Horizontal Developer reasonably acceptable to Vertical Developer, to:

(a) Provide Horizontal Developer or its agents any required access to Michigan Street during Vertical Developer's implementation of the Michigan Street Improvement Plans to construct electrical improvements servicing the 28-Acre Site Project, the Historic Core Project, and the Pier 70 Shipyard, including undergrounding of feeder lines and connections to the Switchgear Facilities;

(b) Provide for coordination between Vertical Developer and Horizontal Developer during the construction of 20th Street east of Illinois Street and 21st Street between Illinois Street and the 28-Acre Site;

(c) Establish each party's obligations related to liability for damage to and restoration of the Horizontal Improvements and/or the PKN Horizontal Improvements;

(d) Provide Horizontal Developer with advance notice of the availability of non-impacted surplus soil from the Property and the first right to receive the surplus soil at a location for delivery in the 28-Acre Site identified by Horizontal Developer;

(e) Establish any required schedule of performance for the completion of any portion of the Horizontal Improvements and other improvements that may impact Vertical Developer's ability to commence and complete construction of the PKN Project; and

(f) Coordinate formation, administration, maintenance and funding of the TMA.

13. DEVELOPMENT OF PKN PROJECT .

13.1. ***Project Requirements***. Vertical Developer must construct the Vertical Project, and, except as set forth in ***Sections 12.2*** and ***13.5(b)***, the PKN Horizontal Improvements. The PKN Project will be designed, reviewed, constructed and completed in accordance with (i) in all material respects, the Scope of Development attached hereto as ***Exhibit B***, (ii) the Vertical Development Requirements, (iii) in all material respects, the PKN Horizontal Improvements Requirements, (iv) ***Articles 11*** (Compliance with Laws and Regulatory Approvals) through and including ***Article 26*** (Definitions) of this Agreement, (v) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen sinks in any café, restaurant or other food establishment on the Property, (vi) the Mitigation Monitoring and Reporting Program, (vii) the Final EIR for the SUD, and (viii) the Pier 70 Risk Management Plan (sometimes collectively referred to as the "**Project Requirements**"). Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

13.2. ***Mitigation Monitoring and Reporting Program***. In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the PKN Project will be in accordance with all applicable Environmental Laws and the Mitigation Monitoring and Reporting Program attached hereto as ***Exhibit F***. Vertical Developer will incorporate the Mitigation Monitoring and Reporting Program applicable to the PKN Project into any contract or subcontract.

13.3. ***Amendment of Development Requirements***. Vertical Developer will not seek any amendment to the Design for Development under Section 249.79(c) of the SUD or to the SUD under Section 302 of the Planning Code without obtaining the prior written consent of Port, which consent may be given or withheld in its of sole discretion. In its application to Port or the City for a Regulatory Approval under the SUD or applicable building codes, Vertical Developer will expressly identify in writing any elements of its proposed construction that requires an amendment to the Vertical Development Requirements or the PKN Horizontal Improvements Requirements, and state the reason for the proposed amendment. No amendment to the Vertical Development Requirements or the PKN Horizontal Improvements Requirements will be effective with respect to such items if an amendment was not clearly sought by Vertical Developer in writing and such amendment was not approved by Port in its proprietary capacity.

13.4. ***Street and Utility Vacations***. The Parties acknowledge that the recordation of the PKN Final Map and construction of PKN Horizontal Improvements will require the vacation of certain streets and utilities located within or adjacent to the Property, and the failure to do so in a timely manner could adversely affect or delay the Commencement or the completion of the applicable PKN Horizontal Improvements. Therefore, in connection with each Subdivision Map application, the Parties will work cooperatively to identify those Street and Utility Easements that should be abandoned, removed, relocated, amended, or otherwise modified to permit the recordation of a Final Map and/or to allow the construction of the PKN Horizontal Improvements (each, an **"Easement Action"**). To the extent that the Easement Actions will require action by the City, such as a quiet title action or Board of Supervisors action to abandon, vacate, or relocate (temporarily or permanently) the applicable Street and Utility Easement, Port will urge the City to take all such reasonable measures to implement the required Easement Actions.

13.5. ***Construction of Infrastructure***.

(a) Vertical Developer will be solely responsible for developing all improvements within the Property, including, without limitation, private right of ways, pedestrian walkways, infrastructure, and landscaping and hardscaping in any open space and common areas located within the Property. Pedestrian facilities on Illinois Street, adjacent to the Property, will be constructed in compliance with San Francisco Planning Code Section 138.1, and Mitigation Measure M-TR-10 in the Mitigation Monitoring and Reporting Program.

(b) Except as set forth in ***Section 15.11***, Vertical Developer will be required to construct the PKN Horizontal Improvements identified in ***Exhibit B*** for acceptance by Port, in accordance with the schedule of performance set forth in ***Section 15.10***, and subject to reimbursement by Port under specified conditions as set forth in the financing plan and acquisition agreement attached hereto as ***Exhibit G*** (the "**Financing Plan**").

(c) Prior to the Commencement of Construction, Port and Vertical Developer shall enter into the License substantially in the form attached hereto as ***Exhibit H*** with such commercially reasonably changes mutually agreed to by Vertical Developer and Port (the "**License**").

(d) If Vertical Developer requires access to any real property outside of the Property in connection with the construction of the PKN Project that is under the control of:

(i) Port, Port will enter into a license with Vertical Developer, substantially in the form of the License; or

(ii) Horizontal Developer pursuant to the Master Lease, Vertical Developer will enter into a license with Horizontal Developer.

The License will remain in effect until the Port Commission accepts, in its sole discretion, all Port Acceptance Items, and all Sub-Surface Improvements have been accepted by the appropriate Acquiring Agency, except that the applicable portions of the License premises

may be terminated after acceptance of 1) the 20th Street Plaza, or 2) Michigan Street. Vertical Developer acknowledges and agrees that Port plans to issue another license to Horizontal Developer to permit installation of electrical facilities in Michigan Street to serve the 28-Acre Site Project, under procedures to be mutually agreed by Vertical Developer and Horizontal Developer in the VCA.

13.6. ***Intentionally Omitted***.

13.7. ***Intentionally Omitted***.

13.8. ***Costs of Vertical Project Sole Responsibility of Vertical Developer***. Port has no responsibility for any costs of the Vertical Project and Vertical Developer will pay (or cause to be paid) all such costs.

13.9. ***Intentionally Omitted*** .

13.10. ***Regulatory Approvals***.

(a) **Port Acting as Owner of Property**. Vertical Developer understands and agrees that Port is entering into this Agreement in its proprietary capacity as the holder of fee title to the Property and not as a Regulatory Agency with certain police powers. Vertical Developer agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the PKN Project can be obtained. Vertical Developer agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the PKN Project will be issued by the appropriate Regulatory Agency, and Vertical Developer understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Vertical Developer will obtain any required approvals from Regulatory Agencies which have jurisdiction over the PKN Project and/or the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Vertical Developer, at Vertical Developer's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the PKN Project. By entering into this Agreement, Port is in no way modifying or limiting Vertical Developer's obligations to cause the Property to be developed, restored, used and occupied in accordance with all Laws. Vertical Developer further agrees and acknowledges that any time limitations on Port review or approval within this Agreement applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Vertical Developer understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the PKN Project or other matters related to this Agreement, and any such advocacy, promotion or lobbying will be done by Vertical Developer at Vertical Developer's sole cost and expense. Vertical Developer hereby waives any Claims against the City Parties, and fully releases and discharges the City Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the PKN Project.

(b) **Regulatory Approval; Conditions**.

(i) Vertical Developer understands that construction of the PKN Project, and Vertical Developer's contemplated uses and activities on the Property, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, SFPW, SFDPH, BAAQMD, Cal OSHA and other Regulatory Agencies. Vertical Developer is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

(ii) Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Agreement, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if (1) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could encumber, restrict or adversely change the use of any Port property other than the Property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions; or (2) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions or restrictions under such permit that could restrict or change the use of the Property in a manner not otherwise permitted under this Agreement or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees Port may be subject to as a result of such Regulatory Approval).

(iii) Port will provide Vertical Developer with its approval or disapproval thereof in writing to Vertical Developer within ten (10) business days after receipt of Vertical Developer's written request, or if Port's Executive Director reasonably determines that Port Commission or Board of Supervisors action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Vertical Developer's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of Board or Port Commission meetings. Port will join in any application by Vertical Developer for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

(iv) Vertical Developer will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval for the PKN Project, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval relating to the PKN Project, including the economic costs of any development concessions, waivers, or other impositions relating to the PKN Project, and whether such conditions or restrictions are on-site or require off-site improvements, removal, or other measures. Vertical Developer in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval. Vertical Developer will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Vertical Developer will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Vertical Developer to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Vertical Developer's obligation to pay all the costs of complying with any conditions or restrictions. Vertical Developer will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Property.

(v) Without limiting any other Indemnification provisions of this Agreement, Vertical Developer will Indemnify the City Parties from and against any and all Losses which may arise in connection with Vertical Developer's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval relating to the PKN Project which will be necessary to develop and construct the PKN Project in

accordance with the Scope of Development, except to the extent that such Losses arise from the gross negligence or willful misconduct of any City Party.

(c) **Compliance**. Vertical Developer is solely responsible for ensuring that the design and construction of the PKN Project complies with all PKN Development Requirements and applicable Laws at no cost to Port, except as may be provided for in the Financing Plan.

(d) **Noncompliance**. Vertical Developer must pay any fines and penalties and perform any corrective actions imposed for noncompliance with any applicable Laws and Indemnify Port against any Losses arising from such noncompliance, even if Port is a co-permittee, except to the extent such Losses were caused by Port's gross negligence or willful misconduct. Vertical Developer will not be entitled to reimbursement from public financing sources for any such fines and penalties, and, except as may be provided for in the Financing Plan, such costs of corrective actions related to its construction of the PKN Horizontal Improvements.

13.11. ***Conditions to Commencement of Construction of the PKN Project***.

(a) **Conditions Precedent**. Unless expressly waived by Port, Vertical Developer must satisfy all of the following conditions before Commencement of Construction of the PKN Project:

(i) *Certification*. Vertical Developer will have delivered to Port a statement certified by its officer as true, correct and complete that (1) to its knowledge, it has obtained all Regulatory Approvals required to commence construction of the PKN Project, (2) it has obtained sufficient financing or equity to commence and complete the PKN Project, and (3) it has paid the City all Impact Fees and Exactions that are required to be paid prior to Commencement of Construction of the PKN Project, including, but not limited to, the affordable housing in-lieu payments required pursuant the SUD.

(ii) *Good Standing*. There will be no uncured Vertical Developer Default by Vertical Developer under this Agreement.

(iii) Intentionally Omitted.

(iv) *Construction Documents*. The Construction Documents for the PKN Project must conform in all material respects to the Scope of Development. By way of example, the Vertical Project must contain the number of floors and residential units described in the Scope of Development.

(v) *Tentative Subdivision Map*. Vertical Developer has obtained Port's conditional approval of the PKN Tentative Map for the PKN Project, entered into one or more Public Improvement Agreements with the City, and provided all bonds required under the Subdivision Code.

(b) **Conditions for Benefit of Port**. The conditions in ***Section 13.11(a)*** (Conditions Precedent) are solely for the benefit of Port. Only Port may waive any of those conditions, and only to the extent waivable under Law.

(c) **Effect of Failure of Condition**. Vertical Developer's failure to satisfy any condition described in ***Section 13.11(a)*** (Conditions Precedent) will not alone relieve either Party of any obligations that previously arose under this Agreement.

(d) **Commencement Estoppel**. Vertical Developer has the right, but not the obligation, to request an estoppel certificate from Port, at no cost to Port, for the benefit of Vertical Developer and any Mortgagee or other lender, stating that Vertical Developer has satisfied the conditions set forth in ***Section 13.11***, and that, to Port's actual knowledge Vertical Developer is not in default under this Agreement (provided that Vertical Developer is not). Any such request will include a certification by Vertical Developer that (i) satisfies the requirements

of ***Section 13.11(a)(i)*** and (ii) that to Vertical Developer's actual knowledge, Port is not in default under this Agreement (provided that Port is not). Port will provide such estoppel within thirty (30) days after receipt of Vertical Developer's written request.

13.12. ***Safety Matters***. Vertical Developer will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining or nearby property, or the risk of injury to members of the public, caused by or resulting from the performance of its development of the PKN Project. Vertical Developer will erect appropriate construction barricades to enclose the areas of such construction and maintain them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

13.13. ***Post-Closing Boundary Adjustments***. The Parties acknowledge that, as development of the Property and the 28-Acre Site advances, the description of each parcel of real property may require further refinements, which may require minor boundary adjustments. The Parties agree to cooperate in effecting any required boundary adjustments consistent with ***Section 25.3*** (Technical Changes). Vertical Developer agrees that all conveyance agreements from Vertical Developers to any Transferees of the Property will include the obligation to cooperate with Port in boundary adjustments.

13.14. ***Vertical Developer Outreach Requirement***. The PKN Project is subject to the administrative design review process set forth in the SUD, which provides an opportunity for third parties to review and comment on an application for design review of the PKN Project prior to approval by the City's Planning Director. Additionally, as a requirement of this Agreement, Vertical Developer will make an informational presentation regarding the consistency of its application with the SUD and Design for Development to Port's Central Waterfront Advisory Group ("**CWAG**") within 30 days of its submittal to the Port Director. Port will reasonably cooperate with Vertical Developer to schedule and notice this presentation to CWAG by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation. If a CWAG meeting cannot be scheduled within 30 days of the submittal, the Vertical Developer will have the option to present at the next scheduled CWAG meeting or to host a public presentation of its design and will provide a minimum of 2 weeks' notice by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation. The presentation is for informational purposes only; any third party wishing to submit a formal public comment on the design of the Vertical Project will be required do so pursuant to the process set forth in the SUD. Except as set forth in the following sentence, nothing in this Section shall in any manner alter, modify or impact the time periods set forth in Section 249.79(l) of the SUD. However, should the Vertical Developer desire to change its design review application to incorporate any feedback received from the presentation, any such changes submitted more than 30 days after the initial submission will reset the 60-day design review period established by the SUD.

13.15. ***Information Required by the County Assessor***. The County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable transfers of property. ***Exhibit I*** lists the information that the County Assessor expects to need in order to perform the foregoing tasks (the "**Assessor Information**"). Each Party will provide to the County Assessor any Assessor Information requested in writing by the County Assessor in the format required by the County Assessor (the "**Requested Information**") within 90 days of the applicable Party's receipt of a written request for such Requested Information. Port's and Vertical Developer's sole remedy with regard to a breach of this ***Section 13.15*** is specific performance. Vertical Developer waives any right to confidentiality under applicable Law to the extent necessary for the County Assessor to notify Port of Vertical Developer's failure to provide the Requested Information on a timely basis and Port to exercise its right to specific performance of Vertical Developer's

obligation. Promptly following the County Assessor's request, Port may, from time to time update the information requirements set forth in ***Exhibit I*** by providing Vertical Developer no less than twenty (20) business days' prior notice and a replacement copy of ***Exhibit I***.

13.16. ***Other Construction Matters***

(a) **Construction Signs**. Vertical Developer must provide appropriate construction signs and a project sign or banner describing the project and must post the signs at the Property and PKN Improvement Area during construction. Unless and until the Port Commission adopts a Signage Plan that addresses construction signage, Port's Guidelines for Review and Approval of Signs and Murals on Port Property, adopted by Resolution No. 97-12, will apply. Vertical Developer must submit the proposed size, design, text, and location of any construction signs and the composition and appearance of any construction barriers to Port for approval before installation.

(b) **Coordination**. The Parties acknowledge that a number of construction projects on public land near Parcel K North are being or are expected to be constructed at the same time as the construction of the PKN Project. Expected projects include the Historic Core Project, the 28-Acre Site Project including reconstruction of 20th Street and construction of 21st Street, construction of Crane Cove Park, construction of SFMTA line extensions, development of the Hoedown Yard (as defined in the Horizontal DDA), and SFPUC utility infrastructure work. Vertical Developer will use reasonable efforts to coordinate construction efforts with those at other project sites in a manner intended to reduce construction conflicts without material delays to the critical path to completion of the PKN Construction Obligations under this Agreement.

(c) **Construction Staging**. During the Term, Vertical Developer may use portions of the PKN Improvement Area as staging areas for construction lay down and parking, construction equipment, and related materials under this Agreement pursuant to the License granted pursuant to ***Section 13.5(d)(i)***. Vertical Developer will maintain continuous public access to the Historic Core Project. Vertical Developer may request additional areas under Port's jurisdiction that are outside of PKN Improvement Area for construction staging, which Port may grant or deny in its sole discretion. If Port agrees to license additional land to Vertical Developer for this purpose, Port may charge license fees at market rates. If Vertical Developer requests use of the 20th Street Plaza for a sales office, Port will charge license fees in accordance with Port parameter rent schedule for paved land.

(d) **Fire Access**. Prior to Port's issuance of a temporary certificate of occupancy for any portion of the Vertical Project abutting the to-be-created 21st Street, Port shall provide space for a fire access lane and turnaround on the proposed 21st Street, which location shall be approved by Port Fire Marshal in his or her sole discretion.

14. CONSTRUCTION AND OPERATION OF VERTICAL PROJECT.

14.1. ***Creation of Condominium Regime and Sales of Condominium***.

(a) In addition to its obligations to construct the PKN Project, Vertical Developer is responsible for creating a residential condominium regime for the Vertical Project, including preparation and filing of a Condominium Map for the Vertical Project; preparing and recording a Declaration of Conditions, Covenants and Restrictions (or equivalent instrument as determined by Vertical Developer) for the Vertical Project ("**CC&Rs**"); and preparing all materials necessary to obtain approvals from the California Department of Real Estate for sales of the Condominiums and marketing and selling the Condominiums and obtaining all necessary regulatory approvals for such matters, including without limitation approvals from the City and the California Department of Real Estate. The CC&Rs shall include (i) the general obligation of purchasers of Condominium Units to comply with the MMRP, (ii) the specific MMRP obligations which are applicable to purchasers of Condominium Units, (iii) disclosures, covenants and restrictions arising from the Pier 70 Shipyard as set forth in Section 14.1(b)

below, (iv) AIC acknowledgements and disclosures as set forth in Sections 14.1(c) and (e) below, (v) restrictions regarding the eligibility of purchasers of Condominium Units to obtain residential parking permits under Transportation Code section 905, and (vi) the obligation of the purchasers of Condominium Units to pay an amount equivalent to Services Special Taxes that would have been levied if the CFDs applicable to the Property or their taxing powers are ever eliminated or reduced for any reason, including any vote of the qualified electors in the CFD applicable to the Property ((i)-(vi) collectively referred to as the "**Required CC&R Provisions**"). Prior to the adoption of the CC&Rs, Vertical Developer shall provide Port the Required CC&R Provisions for Port's review and approval for the sole purpose of confirming compliance with this Section ***14.1(a)***. The CC&Rs shall further provide that the Required CC&R Provisions may not be amended without the prior written consent of Port. The City shall be a third party beneficiary to Required CC&R Provision (iv), and Required CC&R Provision (vi) may not be amended without the prior written consent of City.

(b) The Parties acknowledge that the Vertical Project is located in proximity to the Pier 70 shipyard (the "**Pier 70 Shipyard**"), an industrial facility that contains approximately 14.7 acres of improved land and 17.4 acres of submerged lands, including floating Dry Dock#2, floating Dry Dock Eureka, and an 8k ampere Shoreside Power System. Existing and future operations at the Pier 70 Shipyard may generate certain impacts such as noise, parking congestion, truck traffic, auto traffic, odors, dust, dirt, view and visual obstructions. In order to avoid interference with the Pier 70 Shipyard without being subject to suits by adjacent property owners or tenants against Port for nuisance, inverse condemnation or similar causes of action, Vertical Developer will acknowledge the foregoing facts and understandings in the Restrictive Covenants to be recorded against the Property at Close of Escrow. In addition, Vertical Developer will include (i) as a deed restriction in each deed delivered to a purchaser of a Condominium Unit and/or (ii) in any lease for a residential unit, an acknowledgment of the foregoing impacts, and a waiver of rights relating to commencing or maintaining a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard.

(c) The Parties acknowledge that the Vertical Project is also located in proximity to the American Industrial Center ("**AIC**"), which houses approximately 900,000 square feet of commercial, industrial, and related supporting uses. Approximately 300 tenants, including breweries, commercial kitchens and bakeries, garment manufacturing businesses, warehouses, and distribution centers, lease space in the AIC and approximately 2,500 to 3,000 people are on the site at a given time. AIC loading docks are located on Illinois Street, and noise from loading activities could cause noise disturbance along the western boundary of the Property. In order to minimize interference with the AIC without being subject to suits by adjacent property owners or tenants against AIC for nuisance, inverse condemnation or similar causes of action, Vertical Developer will acknowledge the foregoing facts and understandings in the Restrictive Covenants to be recorded against the Property at Close of Escrow. In addition, the Restrictive Covenants will require the Vertical Developer to provide the following disclosure to lessees prior to signing a lease or purchasers of Condominium Units at the time required by California Civil Code Section 1102.3:

> "DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S): You are purchasing or leasing property that is adjacent to or nearby to the existing American Industrial Center (AIC). As of [DATE], the AIC is located in a PDR-1-G (Production, Distribution and Repair – General) zoning district and contains light industrial, as well as office, retail, and other uses. Consistent with such zoning, the AIC operations generate noise associated with truck traffic and loading activities at the AIC and other impacts at all hours of the day, seven days per week, even if operating in conformance with existing laws and regulations and locally accepted customs and standards for operations of

such uses. California law provides: "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance." (Cal. Civil Code Section 3482). You should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living near the AIC, and understand that the AIC is not required to alter its current or future activities undertaken in compliance with applicable laws and zoning regulations after construction of your building."

(d) Vertical Developer shall disclose to purchasers of Condominium Units that they are prohibited from prepaying Services Special Taxes and Facilities Special Taxes (each as defined in the Financing Plan).

(e) Vertical Developer will also include the following provisions in a Declaration of Conditions, Covenants and Restrictions (or equivalent instrument as determined by Vertical Developer) or property management agreement if the Vertical Project is operated as a residential rental project:

(i) Establishment of a point of contact within the homeowners association and/or property manager to receive any resident complaints regarding noise or other issues related to AIC operations prior to any such complaints being submitted to the AIC. Such point of contact shall be responsible for providing to complainant a copy of the DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S);

(ii) Establishment of a "meet and confer" process to (a) receive any resident complaints regarding noise or other issues related to AIC operations, and (b) consistent with the DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S), resolve directly with AIC such complaints, with the goal of resolving informally between the Vertical Project and AIC any resident complaints prior to the complainant's filing of a formal complaint with the City or other regulatory agency;

(iii) Designation of a representative of the condominium association and/or property owner/management company to act as a liaison with the AIC. The liaison shall promote open and regular communication between the residential project and AIC. The liaison shall work with appropriate AIC representatives to ensure that both the occupants of the Vertical Project and AIC (and their respective residents/tenants) receive advance notice of events that may affect residents or AIC tenants, and to minimize the disruption associated with such events.

(f) The Memorandum of VDDA shall provide that except as set forth in the Residential Condominium Unit Owners Restrictive Covenants recorded against the Property which by their terms obligate owners of Condominium Units in the Vertical Project, no bona fide purchaser of an individual Condominium Unit shall be bound by or subject to the VDDA.

14.2. ***Project Phasing***. Vertical Developer may construct the Vertical Project in two phases, provided that the first phase of the Vertical Project shall consist of at least 104,680 square feet of residential Gross Floor Area.

14.3. ***Operation as a Residential Rental Project; Payment of Transfer Fees***. In the event of Adverse Market Conditions, Vertical Developer has the right, but not the obligation, to operate the Vertical Project as a residential rental project and without any obligation to pay the Transfer Fees (defined below) for a period not to exceed 10 years from issuance of the first certificate of occupancy for the Vertical Project (the "**Unencumbered 10 Year Period**"). If Vertical Developer operates the Vertical Project as a residential rental project after the expiration of the Unencumbered 10 Year Period, then (a) upon the initial Transfer of each Condominium Unit following the Unencumbered 10 Year Period, Vertical Developer shall pay to Port a fee equal to one and one half percent (1. 5%) of the Unit Purchase Price (as defined in the Transfer Fee Covenant attached hereto as Exhibit ***C-2B***) upon closing of such sale (the "**Transfer Payment**") and (b) commencing on the anniversary of the expiration date of the Unencumbered 10 Year Period and on each such anniversary thereafter for so long as any

individual Condominium Unit remains unsold, Vertical Developer shall pay to Port a fee relating to the unsold Condominium Units calculated in accordance with Schedule 14.3 for the applicable year preceding such anniversary (the "***In-Lieu Transfer Payment***" and together with the Transfer Payment, the "**Transfer Fees**")). .

14.4. ***District-Scale Wastewater Treatment and Recycling System Notification***. Port will notify Vertical Developer of the City's intent to construct a district-scale Wastewater Treatment and Recycling System (the "**Pier 70 WTRS**") at Pier 70 prior to June 1, 2019. Under the plan for the Pier 70 WTRS (the "**Pier 70 WTRS Plan**") currently being considered by the SFPUC and Port, Vertical Developer would pay an opt-in charge and connect to recycled water distribution lines as a means of complying with Article 12C of the San Francisco Health Code. In the event Port does not provide notice under this Section, Vertical Developer will be obligated to comply with Article 12C of the San Francisco Health Code. Vertical Developer will be obligated to comply with the Pier 70 WTRS Plan if (a) Port delivers a timely notice under this Section, (b) development, construction and operational costs for the Vertical Project to participate in the Pier 70 WTRS is less than or equal to the development, construction and operational costs for the Vertical Project to not participate in the Pier 70 WTRS, as reasonably determined by Vertical Developer, and (c) the City determines that Vertical Developer's participation in the Pier 70 WTRS will satisfy, or be deemed to satisfy, its obligations under Article 12C of the San Francisco Health Code, as amended or superseded.

14.5. ***Electricity***. Vertical Developer shall procure all electricity for the PKN Project from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission determines that it cannot feasibly provide service to the PKN Project, Vertical Developer may seek another provider.

14.6. ***Noise Level Measurements; Noise Level Design Protections***.

(a) Vertical Developer will conduct long-term noise measurements prior to designing the Vertical Project. These measurements will be conducted for at least 48 hours (as compared to the typical 24 hour period) and should include normal operation of the AIC loading docks. Vertical Developer will consult with AIC to determine appropriate monitoring locations and the most representative 48-hour window within a two week period, during a time of year of typical, representative operations. Provided, however, that if it is not feasible to conduct the long-term noise measurements during a time of year of typical, representative operation at AIC, the consultant conducting noise measurements on behalf of Vertical Developer may provide adjusted noise levels that have been modified as appropriate in the consultant's professional opinion to reflect typical, representative operation at AIC. In addition to measuring the site day-night average sound level ("**LDN**"), the measurements will also capture the maximum noise levels ("**LMAX**") associated with AIC operations during nighttime hours (10 p.m. to 7 a.m.). Vertical Developer may capture LMAX noise levels by performing the noise measurements using sound level meters with the ability to record audio when a certain trigger level is exceeded. Therefore, loud events could be recorded and determined if they are AIC loading dock activity or not.

(b) Based on the long-term measurement data collected in ***Section 14.6(a)*** and the predicted Project + Future site noise levels (as addressed in the Horizontal DDA), Vertical Developer will design the Vertical Project's exterior facades (including windows) to reduce exterior noise levels to a maximum of 45 dBA LDN at the interiors of dwelling units, and to 50 dBA Leq at the interiors of any other space where the principal use is non-residential to satisfy the State of California Title 24 requirement. In addition, Vertical Developer will design the exterior façade to reduce maximum interior noise levels from AIC activities during nighttime hours (10 p.m. to 7 a.m.) to the maximum extent feasible with the goal of ensuring maximum interior noise levels of 50 dBA LMAX, where feasible, as determined by the noise consultant conducting noise measurements in accordance with ***Section 14.6(a)***. As addressed in the

Horizontal DDA, Mitigation of LMAX levels is not required by Title 24 and is therefore an additive measure.

(c) Based on the findings in the Final EIR for the SUD that future traffic noise levels along Illinois Street would exceed 65 dBA LDN, as well as the potential for impact from AIC operations such as hoods, unprotected outdoor use areas associated with residential development along Illinois Street (including playgrounds and patio areas but excluding balconies and any pedestrian and/or service passageways) shall be avoided where feasible. Whenever feasible, Vertical Developer will locate outdoor use areas associated with the Vertical Project at the east side or interior of any residential buildings, which will shield the spaces from noise along and across Illinois Street. In addition, where outdoor use areas associated with the Vertical Project are built, Vertical Developer must incorporate mitigation measures to reduce noise levels to up to 70 dBA LDN.

14.7. ***Survival***. The provisions of this ***Article 14*** shall survive the expiration or earlier termination of this Agreement.

15. CONSTRUCTION OF PKN HORIZONTAL IMPROVEMENTS.

15.1. ***Preparation of PKN Improvement Plans*** . Vertical Developer agrees to comply with the Improvement Plan Submittal requirements set forth in ***ICA Sections 4.3*** *(Improvement Plans for Horizontal Improvements-Generally)* and ***4.4*** *(Processing of Improvement Plans and Issuance of Construction Permits)*. The ICA is attached hereto as ***Exhibit J***. The ICA sets forth procedures and standards for review and approval of Improvement Plans and Master Utilities Plans (as defined in the Horizontal DDA) and issuance of construction permits for Horizontal Improvements serving the 28-Acre Site. Vertical Developer and Port acknowledge and agree that the ICA does not govern the PKN Project, but Port agrees to utilize commercially reasonable efforts to encourage Regulatory Agencies to comply with the procedures and standards set forth in the ICA for these reviews.

15.2. ***Review of PKN Improvement Plans*** .

(a) **Review by City Agencies**. Vertical Developer and Port acknowledge and agree that the ICA does not govern Regulatory Agency review of the PKN Tentative Map or the PKN Improvement Plans, but Port agrees to utilize commercially reasonable efforts to encourage Regulatory Agencies to comply with the procedures and standards set forth in the ICA for these reviews.

(b) **Port Review Procedures**. Port staff will review and approve PKN Improvement Plans for consistency with the Project Requirements in accordance with the procedures for review and approval set forth in the ICA.

(c) **Standard of Review**. Except as otherwise provided in this Agreement and the Financing Plan, Port's review and approval or disapproval of PKN Improvement Plans subject to its review will be final and conclusive and will comply with ***Section 4.4*** of the ICA (Processing of Improvement Plans and Issuance of Construction Permits).

15.3. ***Conflicts with Other Governmental Requirements***.

(a) **Other Regulatory Approvals**. Port will not unreasonably withhold its approval, where otherwise required under this Agreement, of elements of the PKN Improvement Plans or changes in PKN Improvement Plans required by any other Regulatory Agency if all of the following have occurred:

(i) Port receives notice of the required change.

(ii) Port has at least 10 business days to discuss the element or change with the other Regulatory Agency requiring the element or change and with Vertical Developer's registered design professional in charge.

(iii) Vertical Developer will cooperate fully with Port and with the other Regulatory Agency within the 10 business day discussion period in seeking reasonable modifications of the requirement, or reasonable design modifications of the PKN Horizontal Improvements, or some combination of modifications, to reach a design solution satisfactory to Port.

(iv) As modified, the PKN Horizontal Improvements will comply with all Laws, including the Project Requirements.

(b) **Disputes**. Vertical Developer and Port recognize that regulatory conflicts may arise at any stage in the preparation of the PKN Improvement Plans, but that it is more likely to arise at or after the Permit Set has been prepared and may arise in connection with permit applications. Accordingly, time is of the essence when a conflict arises. Both Parties agree to use their commercially reasonable efforts to reach a solution expeditiously that satisfies both Vertical Developer and Port.

15.4. ***Schematic Design Review of 20th Street Plaza***. Port will not issue a construction permit for the 20th Street Plaza until the Port Commission has approved the schematic design of the 20th Street Plaza.

(a) **Applications**. Vertical Developer will submit to Port an application for the schematic design of the 20th Street Plaza (a "**Schematic Design Application**") within one hundred twenty (120) days after approval by the Planning Director of the Vertical Project. Port has agreed that the Schematic Design Application for the 20th Street Plaza may be submitted separately from the application for design review of the Vertical Project so long as the application for Vertical Project includes renderings or descriptions of the relationship of the Vertical Project and the 20th Street Plaza as to parking, circulation, grading and physical connection. The Schematic Design Application will include the following information:

(i) A written narrative describing the overall conceptual design, including the park program, design elements, and facilities provided for the 20th Street Plaza;

(ii) An illustrative site plan to scale showing;

(1) Conceptual circulation systems (vehicular, bicycle and pedestrian) including parking;

(2) Conceptual grading and drainage;

(3) Generalized locations of active and passive recreational areas, park elements and facilities;

(4) Generalized locations and conceptual layout for landscaping and hardscape areas, including tree planting and any stormwater treatment areas; and

(5) Generalized locations for furnishings, lighting, public art, signage, comfort facilities, stairs, ramps, and railing;

(iii) Illustrative sections and perspectives representative of the overall conceptual design, including key relationships between programmatic areas, design elements, and defining park features and facilities;

(iv) Image "boards" showing proposed concepts, detailed studies and/or precedents for site furnishings, paving materials, site architectural elements, lighting, public art, signage, comfort facilities, stairs, ramps and railings, tree species (and alternate species), and species palette concepts for major landscaping areas; and

(v) A description of any proposed signs consistent with the approved Pier 70 Public ROWs Signage Plan (as defined in the Horizontal DDA).

(b) Pre-Submittal Meetings. Not less than 30 days before submitting a Schematic Design Application for the 20th Street Plaza, Vertical Developer will submit to Port Director a draft of the concept plans and documents of the type listed in ***Section 15.4(a)***. Not less than 20 days before submitting a Schematic Design Application, Vertical Developer and Port staff will hold at least one pre-submittal meeting at an agreeable time. Vertical Developer may submit information and materials iteratively, and Vertical Developer and Port may agree to hold such additional meetings as they may deem useful or appropriate. If Vertical Developer fails to submit such preliminary documents or to schedule such pre-submittal meeting before submitting a Schematic Design Application as specified above, then such failure will not, by itself, be a default under this Agreement, but Port's time for review of the Schematic Design Application will be extended by 30 days.

(c) Port Review - Initial. Port staff will review each Schematic Design Application for completeness, which means the Schematic Design Application includes all documents and materials in such detail as is required hereunder. Port will make its determination of completeness within 15 days after submittal and will advise Vertical Developer in writing of any deficiencies.

(d) Review of Complete Applications. When the Schematic Design Application is complete, Port staff will transmit the Schematic Design Application to Port's design advisory committee (the **"Design Advisory Committee"**) for consideration at a noticed public hearing at its next meeting.

(e) Developer Outreach. Prior to a public hearing of the Design Advisory Committee for the Schematic Design Application, Vertical Developer will host a public presentation of its Schematic Design Application in accordance with ***Section 13.14***.

(f) Recommendation of Design Advisory Committee. The Design Advisory Committee will hold a public hearing on the Schematic Design Application and make design recommendations to ensure that the design of the 20th Street Plaza is consistent with applicable provisions of the Design for Development and other applicable Project Requirements.

(g) Port Commission Approval. Port Director will submit the applicable complete Schematic Design Application to the Port Commission for review and consideration, with the Design Advisory Committee recommendation for Port Commission consideration. The Port Commission will calendar the Schematic Design Application for review and consideration at the next available regular Port Commission meeting after the public hearing held by the Design Advisory Committee, but in no case more than 45 days after the Design Advisory Committee public hearing at which the Design Advisory Committee makes its recommendation on the Schematic Design Application. In the event of a disapproval, the Port Commission will issue findings to support its decision. Thereafter, Vertical Developer may re-submit a revised Schematic Design Application to the Port Commission that will address the Port Commission's reasons for disapproval. Port Director will resubmit the applicable revised Schematic Design Application to the Port Commission for review and consideration at the next available regular Port Commission meeting, but in no case more than 45 days after the submittal of the revised Schematic Design Application.

(h) Approval of 20th Street Plaza Improvement Plans; Amendments to Approved Schematic Design. After the Port Commission's approval of the Schematic Design Application, the 20th Street Plaza Improvement Plans will be processed in accordance with ***Section 15.2*** above. Port Director may approve 20th Street Plaza Improvement Plans that amend or modify the approved Schematic Design Application, provided she finds that the amendment or modification would not be a material change, would not be detrimental to the public welfare or injurious to the property or improvements in the vicinity of Parcel K North, and would be consistent with the Project Requirements. If Port Director determines that the Schematic Design Application amendments would not meet the foregoing criteria, the amended Schematic Design Application will be subject to the same procedures as a new Schematic Design Application.

(i) Park Rules and Regulations. Port staff is developing reasonable rules and regulations for the conduct of activities and operations in the Public Spaces, including limits on restricted access events. Port shall provide Vertical Developer with an opportunity to review and comment on the rules and regulations prior to final approval by the Port Commission. Rules and regulations approved by Port Commission will apply to the 20th Street Plaza when finally accepted by Port under this Agreement.

15.5. ***Commercially Reasonable Costs***. Financing Plan ***Section 2*** governs Vertical Developer's obligations related to contracting for PKN Horizontal Improvements and for the parties' agreement regarding commercially reasonable costs.

15.6. ***Warranties*** . Vertical Developer covenants that each PKN Horizontal Improvement constructed or installed by Vertical Developer shall be free from defects in material or workmanship and shall perform satisfactorily for a period (a "**Warranty Period**") of one (1) year from issuance of the Compliance Determination for the applicable PKN Horizontal Improvement. Vertical Developer shall assign the warranties to the Port upon acceptance of such PKN Horizontal Improvement in the manner provided for in ***Section 16.5***. Such Warranty Period shall begin upon issuance of a Compliance Determination for the applicable PKN Horizontal Improvement (or portion thereof). Until the assignment of the warranties upon acceptance, Vertical Developer shall, as necessary, and upon receipt of a request in writing from the Acquiring Agency that the work be done, inspect, correct, repair or replace any defects in the PKN Horizontal Improvements at its own expense. Should Vertical Developer fail to act with reasonable promptness to make such inspection, correction, repair or replacement, or should an emergency require that inspection, correction, repair or replacement be made before Vertical Developer can be notified (or prior to Vertical Developer's ability to respond after notice), the Acquiring Agency may, at its option, upon notice to Vertical Developer, make the necessary inspection, correction, repair or replacement or otherwise perform the necessary work and Vertical Developer shall reimburse the Acquiring Agency for the actual cost thereof. Vertical Developer's responsibility until acceptance of a PKN Horizontal Improvement pursuant to ***Section 16.6*** shall include repairing defects and defective material or workmanship, but not ordinary wear and tear or harm or damage from improper maintenance or operation of such PKN Horizontal Improvement by Port, the City, or any agent or agency of either.

15.7. ***Construction Standards***. All construction of the PKN Horizontal Improvements must be performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

15.8. ***Security***.

(a) Delivery of 20th Street Plaza Security. On or before the earlier of (i) the issuance of the first temporary certificate of occupancy for first phase of the Vertical Project and (ii) issuance of the permit for the construction of the 20th Street Plaza, Vertical Developer must provide to Port a payment and performance bond (the **"20th Street Plaza Security"**) conforming to the requirements of the Subdivision Code, ***Section 13.11(a)(iii)***, and this ***Section 15.8(a)***, in a secured amount equal to 100% of the then-current cost estimate for the 20th Street Plaza provided by Vertical Developer under ***Schedule 1*** of the Financing and Acquisition Plan (the **"Secured Amount"**). The issuer of the 20th Street Plaza Security shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have either a current A.M. Best Rating not less than "A-, VIII" or shall be listed in the current version of the United States Department of the Treasury's Listing of Approved Sureties (Department Circular 570), and shall be satisfactory to Port. Vertical Developer's security obligations for Michigan Street shall be provided for in the Public Improvement Agreement(s). In the event such security obligations are not provided for in the Public Improvement Agreements, Vertical Developer shall provide security for Michigan Street substantially similar to the 20th Street Plaza Security.

(b) Reduction, Return, and Release.

(i) Ninety percent (90%) of the 20th Street Plaza Security will be released upon Port's issuance of a Compliance Determination under ***Section 16.4(b)*** (Compliance Determination) for the 20th Street Plaza. Ten percent (10%) of the 20th Street Plaza Security will be released upon the expiration of the Warranty Period.

(ii) After final release, upon request of Vertical Developer, Port will promptly (and in any event within 30 days following such request) return to Vertical Developer the original 20th Street Plaza Security documents and, if requested by Vertical Developer, provide a written confirmation of such release and return.

15.9. ***Progress Meetings***.

(a) Purpose. Vertical Developer must schedule and notify Port of the place and time for meetings between Port and Vertical Developer's construction management team to discuss construction progress in which Port and the other Regulatory Agencies will be entitled to participate. Such notice and meetings must occur at least once per month upon Commencement of Construction of the PKN Project, and may occur more or less frequently upon mutual agreement by the Parties. The purpose of the Regulatory Agencies' participation in these meetings will be to:

(i) coordinate Vertical Developer's preparation and submittal of PKN Improvement Plans to Port for Regulatory Agency review;

(ii) review progress in constructing the PKN Horizontal Improvements;

(iii) coordinate the Acquiring Agency's inspections;

(iv) review Vertical Developer's expected change orders for the PKN Horizontal Improvements; and

(v) review any expected changes in the scope of work for the PKN Horizontal Improvements.

(b) Minutes. Vertical Developer agrees to prepare and distribute meeting minutes promptly after each progress meeting. Port staff and Vertical Developer (and their respective consultants subject to Port and Vertical Developer presence or consent) agree to communicate and consult informally as frequently as reasonably necessary to assure that the formal submittal of any PKN Improvement Plans to Port can receive prompt and speedy consideration.

(c) Representatives. For the purposes of this ***Section 15.9*** until otherwise directed, Port's representative is the Chief Harbor Engineer. Vertical Developer will provide Port with notice of the identity of its representative promptly after the Effective Date. Vertical Developer will notify Port promptly after any change in its representative.

(d) Reports. During periods of construction, Port will have the right to require Vertical Developer to submit monthly progress reports on construction to Port, in form and detail as reasonably required by Port.

15.10. ***Vertical Developer Schedule of Performance***. The Parties agree that delivery of the PKN Horizontal Improvements are a primary public benefit of Port's offering of the Property for development and that delivery of these benefits are conditions to occupancy of the Vertical Project. Accordingly, Vertical Developer must (i) complete the Michigan Street ROW (excluding items within the furnishing zone, street trees, irrigation facilities, and systems not necessary for the safe passage of the public) to the standard necessary for the Chief Harbor Engineer to issue a temporary certificate of occupancy for the Vertical Project, (ii) Substantially Complete and submit a Compliance Request for the Michigan Street ROW within seven (7)

months of Vertical Developer's receipt of the first temporary certificate of occupancy for the Vertical Project, (iii) Substantially Complete the 20th Street Plaza within six (6) months of Vertical Developer's receipt of the first temporary certificate of occupancy for the Vertical Project, (iv) submit a Compliance Request for the 20th Street Plaza within ten (10) months of Vertical Developer's receipt of the first temporary certificate of occupancy for the Vertical Project, (v) Substantially Complete the 20th Street Plaza within six (6) months of Vertical Developer's receipt of the final temporary certificate of occupancy for the Vertical Project, if developed in phases, and (vi) submit a Compliance Request for the Michigan Street Plaza within ten (10) months of Vertical Developer's receipt of the final temporary certificate of occupancy for the Vertical Project, if developed in phases.

15.11. ***Port Construction of PKN Horizontal Improvements***. In the event Vertical Developer has not Commenced Construction of the Michigan Street ROW and Michigan Street Plaza prior to the fifth (5th) anniversary of the Closing Date, or the 20th Street Plaza prior to the tenth (10th) anniversary of the Closing Date, Port shall have the right, in its sole discretion, to construct all or a portion of such PKN Horizontal Improvements, as applicable, at Port's sole cost and expense; provided that Port may elect to construct such PKN Horizontal Improvement using PKN Payment Sources (as defined in the Financing Plan) or other sources.

15.12. ***Mechanics' Liens***. Vertical Developer must keep the PKN Improvement Area and PKN Horizontal Improvements free from any liens arising out of any work performed, materials furnished, or obligations incurred by Vertical Developer or its Agents. Vertical Developer's failure to cause any construction-related lien to be released of record or bonded or take other action acceptable to Port within ninety (90) days after Vertical Developer's receipt of final notice of the imposition of the lien will be a default under this Agreement, and Port will have the right at its option to effect a release of the lien by any commercially reasonable means. Vertical Developer at its sole cost must reimburse Port for all actual costs Port incurs to do so within thirty (30) days after Port's demand. Vertical Developer will be permitted to contest the validity or amount of any tax, assessment, encumbrance, or other lien and to pursue any remedies associated with the contest, but the contest will be subject to all conditions in this Agreement.

16. SUBSTANTIAL COMPLETION AND ACCEPTANCE OF PKN HORIZONTAL IMPROVEMENTS.

16.1. ***Substantial Completion Determination Request to Port***. When Vertical Developer believes that it has constructed and substantially completed a Port Acceptance Item in accordance with all applicable Project Requirements, it may submit to the Chief Harbor Engineer a request for a determination of Substantial Completion. Vertical Developer's request must include all of the documents listed in ***Exhibit K-1*** (the request, with all submitted materials, the **"Substantial Completion Determination Request"**).

16.2. ***Chief Harbor Engineer Substantial Completion Determination***.

(a) **Initial Review**. The Chief Harbor Engineer will review the Substantial Completion Determination Request and will consult with other Regulatory Agencies as provided under the ICA to determine whether Vertical Developer has substantially completed the Port Acceptance Item in accordance with applicable Project Requirements. After the Chief Harbor Engineer determines that the Substantial Completion Determination Request is complete, he will arrange for a Port inspection of the Port Acceptance Item. The Chief Harbor Engineer will approve or disapprove each Substantial Completion Determination Request within 45 days after receiving Vertical Developer's complete Substantial Completion Determination Request. Port will use commercially reasonable efforts to elicit responses from other Regulatory Agencies within 30 days after receiving Vertical Developer's complete Substantial Completion Determination Request.

(b) Substantial Completion Determination. The Chief Harbor Engineer will grant a Substantial Completion Determination Request by issuing a signed document identifying the Port Acceptance Item that Vertical Developer has constructed and substantially completed in accordance with all applicable Project Requirements (**"Substantial Completion Determination"**). The form of the Substantial Completion Determination is attached hereto as ***Exhibit K-2***.

(c) Disapproval. If the Chief Harbor Engineer disapproves the Substantial Completion Determination Request, he will respond in writing with a reasonably detailed description of the reasons for disapproval and measures necessary to address the deficiencies. Vertical Developer's resubmittal of a Substantial Completion Determination Request will be subject to the same review and response periods.

(d) Effect of Substantial Completion Determination. A Substantial Completion Determination will conclusively establish Vertical Developer's compliance with its Substantial Completion obligations in ***Section 15.10***.

16.3. ***Compliance Request to Port***. When Vertical Developer believes that it has constructed and completed a Port Acceptance Item in accordance with all applicable Project Requirements, it may submit to the Chief Harbor Engineer a request for a Compliance Determination. Vertical Developer's request must include all of the documents listed in ***Exhibit L-1*** (the request, with all submitted materials, the **"Compliance Request"**).

16.4. ***Chief Harbor Engineer Compliance Determination***.

(a) Initial Review. The Chief Harbor Engineer will review the Compliance Request and will consult with other Regulatory Agencies as provided under the ICA to determine whether Vertical Developer has completed the Port Acceptance Item in accordance with applicable Project Requirements. After the Chief Harbor Engineer determines that the Compliance Request is complete, he will arrange for a Port inspection of the Port Acceptance Item. The Chief Harbor Engineer will approve or disapprove each Compliance Request within 45 days after receiving Vertical Developer's complete Compliance Request. Port will use commercially reasonable efforts to elicit responses from other Regulatory Agencies within 30 days after receiving Vertical Developer's complete Compliance Request.

(b) Compliance Determination. The Chief Harbor Engineer will grant a Compliance Request by issuing a signed, acknowledged document in recordable form identifying the Port Acceptance Item that Vertical Developer has constructed and completed in accordance with all applicable Project Requirements (**"Compliance Determination"**). The form of the Compliance Determination is attached hereto as ***Exhibit L-2***.

(c) Disapproval. If the Chief Harbor Engineer disapproves the Compliance Request, he will respond in writing with a reasonably detailed description of the reasons for disapproval and measures necessary to address the deficiencies. Vertical Developer's resubmittal of a Compliance Request will be subject to the same review and response periods.

(d) Effect of Compliance Determination. A Compliance Determination will, subject to Port acceptance as provided for in ***Section 16.5,*** conclusively establish Vertical Developer's compliance with its obligations to construct 1) the 20th Street Plaza, 2) Michigan Street ROW, except as to Sub-Surface Improvements, and 3) Michigan Street Plaza, under this Agreement and the Financing Plan, and the License premises related to the subject Compliance Request will terminate, unless a Port Acceptance Item includes Sub-Surface Improvements for which the Acquiring Agency has not yet accepted ownership, which is addressed under ***Section 16.7*** (Acceptance of Sub-Surface Improvements Before Acceptance by Port). A Compliance Determination will not have any precedential effect for the purpose of the any other Acquiring Agency's acceptance of PKN Horizontal Improvements.

(e) Recordation. Vertical Developer may record in the Official Records each Compliance Determination.

16.5. ***Port as Accepting Agency***. Port will be the Regulatory Agency that will accept for liability and maintenance purposes the PKN Horizontal Improvements, except for the Sub-Surface Improvements. Port shall approve or disapprove the PKN Horizontal Improvements in accordance with ***Section 4.6*** of the ICA (Standards and Procedures for Acceptance) as addressed in ***Section 15.2(b)***.

16.6. ***Port Commission Acceptance Action***. All Port Acceptance Items are subject to Port Commission acceptance as described in this ***Section 16.5***. Within 30 days after the Chief Harbor Engineer's issuance of a Compliance Determination for any Port Acceptance Item, Port staff will place an item on the Port Commission's calendar at the next regularly-scheduled meeting of the Port Commission for which an agenda has not been finalized and for which Port staff can prepare and submit a staff report in keeping with the Port Commission's customary meeting practices and obligations under public meeting laws. The Port Commission will approve or disapprove discretionary matters in accordance with its powers and duties under the Burton Act and the Charter. Port staff will prepare a staff memorandum to the Port Commission that will include the following: (i) a description of the Port Acceptance Item to be accepted; (ii) a finding that the applicable Port Acceptance Item is functional and is constructed in conformity with the Project Requirements; (iii) a list of any permitted encroachments, easements or title exceptions that Port is willing to accept on terms agreed upon by the Parties prior to the Chief Harbor Engineer's issuance of an Compliance Determination; (v) any conditions of acceptance, including conditions related to Sub-Surface Improvements as described in ***Section 16.6(b)*** (Sub-Surface Improvements Not Yet Accepted); and (vi) the Chief Harbor Engineer's recommendation that the Port Commission accept the applicable Port Acceptance Item on the following terms.

(a) **Conformity Findings**. The Port Commission must find that the applicable Port Acceptance Item described in the staff memorandum is functional and is constructed in conformity with the Project Requirements.

(b) **Sub-Surface Improvements Not Yet Accepted**. If a Port Acceptance Item includes Sub-Surface Improvements for which the Acquiring Agency has not yet accepted ownership, a condition to Port's acceptance of the Port Acceptance Item will be the Vertical Developer entering into an amendment to the License reasonably satisfactory to the Parties and the Acquiring Agency, prior to Port acceptance, under which Port grants to Vertical Developer a right-of-entry for maintenance, repair and inspection purposes and Vertical Developer retains ownership and liability for the Sub-Surface Improvements until such time as the Sub-Surface Improvements are formally accepted by the Acquiring Agency. The terms of the License will require Vertical Developer, among other things, to extend applicable insurance coverages, indemnity and release provisions to the subject property.

(c) **Effect of Acceptance**. Acceptance of a Port Acceptance Item by the Port Commission shall:

(i) transfer ownership of the accepted Port Acceptance Item to Port; and

(ii) release Vertical Developer from future obligations for liability or repair of the accepted Port Acceptance Item, except as to surviving provisions of the License, and applicable warranties. There shall be no release as to Sub-Surface Improvements which are required to be, but have not been, accepted by an Acquiring Agency other than the Port; but

(iii) not constitute a waiver of any defects in the PKN Horizontal Improvements.

(d) **Transfer to Port**. Immediately upon acceptance of a Port Acceptance Item by the Port Commission, Vertical Developer shall provide Port:

(i) Vertical Developer's signed assignment of warranties and guaranties for the Port Acceptance Item, in a form acceptable to Port, and

(ii) an executed assignment of the Construction Documents for the applicable Port Acceptance Item.

16.7. ***Acceptance of Sub-Surface Improvements*** . .

(a) **Acceptance Generally**. Compliance determination and acceptance of Sub-Surface Improvements shall be governed by the Public Improvement Agreement between the Vertical Developer and the Acquiring Agency.

(b) **Acceptance of Sub-Surface Improvements Before Acceptance by Port**. As a condition to acceptance of Sub-Surface Improvements which will be accepted by the Acquiring Agency prior to acceptance by Port of the Port Acceptance Item above the Sub-surface Improvements, Vertical Developer will be required to provide the Acquiring Agency with access rights to the Sub-Surface Improvements in accordance with the License

16.8. ***As-Built Drawings***.

(a) **Delivery**. Vertical Developer shall deliver to Port As-Built Drawings for the applicable PKN Horizontal Improvement that meet the requirements of ***Sections 16.8(b)*** (Technical Requirements) and ***16.8(c)*** (Format) for review and/or acceptance of Michigan Street ROW, Michigan Street Plaza and the 20th Street Plaza pursuant to the provisions of this ***Section 16***.

(b) **Technical Requirements**. As-Built Drawings must reflect all requests for information responses, field orders, change orders, and other corrections to the documents made during the course of construction. As-Built Drawings must be both in the form of full-size (24" x 36"), hard paper copies and converted into electronic format as full-size scanned tagged image files (TIFF) and AutoCAD files. As-Built Drawings must be full-sized documents, with "mark-ups" neatly drafted to indicate modifications from the original design documents, scanned at 400 dots per inch (dpi). Each drawing must have a unique number stamped onto the title block. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of 10 drawings must be scanned as a test before execution of this requirement in full.

(c) **Format**. The AutoCAD files must be contained in Release 14 or a later version, and drawings must be transcribed onto electronic storage media. All "X-REF," "block" and other referenced files must be coherently addressed within the environment of the compact disc. Media containing files that do not open automatically without searching or reassigning "X-REF" addresses will be returned for reformatting. A minimum of 10 complete drawing files, including all referenced files, must be transmitted to Port as a test before execution of this requirement in full.

(d) **Production Costs**. Vertical Developer's costs to produce required files will be reimbursable Soft Costs pursuant to the Financing Plan unless Vertical Developer fails to comply timely with this ***Section 16.8***. If Vertical Developer does not comply, Port, after giving notice to Vertical Developer, will have the right, but not the obligation, to cause an engineer of Port's choice to prepare final surveys and As-Built Drawings, plans and specifications, at Vertical Developer's sole, unreimbursable cost.

16.9. ***Intentionally Omitted***

16.10. ***Maintenance of PKN Horizontal Improvements***

(a) **Port Facilities**. Vertical Developer will be required to maintain Port Acceptance Items that will be under Port jurisdiction until Port accepts the applicable Port Acceptance Item.

(b) Non-Port Facilities. Vertical Developer will be required to maintain all Sub-Surface Improvements at its sole cost and expense until the effective date of the Board of Supervisors acceptance action.

(c) Ongoing Maintenance Costs. Ongoing Maintenance Costs (as defined in the Financing Plan) of accepted PKN Horizontal Improvements will be paid by Services Special Taxes (as defined in the Financing Plan) from Zone 1 of the Pier 70 Condo Property CFD in accordance with ***Section 7.5*** (Services Special Taxes) of the Financing Plan.

17. COMPLETION OF PKN PROJECT.

17.1. ***Completion of Vertical Project; Certificates of Completion***. The obligations of Vertical Developer set forth in this Agreement, if any, will be deemed satisfied upon the completion of the PKN Project (as described in ***Section 17.2***), including Port's issuance of a Certificate of Completion for the Vertical Project in accordance with the following terms:

(a) Acceptance of Port Acceptance Items. Vertical Developer may not request a Certificate of Completion until the Port Commission has accepted all Port Acceptance Items.

(b) Submittals. When Vertical Developer reasonably believes that it has Completed the Vertical Project, it may submit to Port an Architect's Certificate in the form attached as ***Exhibit M*** (or such other form as approved by the Chief Harbor Engineer), and request that Port issue a Certificate of Completion. Vertical Developer may not submit a request for a Certificate of Completion until it has received a temporary certificate of occupancy for the Vertical Project, or the second phase of the Vertical Project, as applicable.

(c) Deferred Items. With respect to the Vertical Project, if there remain uncompleted (i) customary punch list items, (ii) landscaping, or (iii) exterior finishes (to the extent Vertical Developer can demonstrate to Port's reasonable satisfaction that such finishes would be damaged during the course of later construction of interior improvements) (collectively "**Deferred Items**"), Port may reasonably condition approval of the Certificate of Completion upon provision of security or other assurances in form, substance and amount satisfactory to Port that all the Deferred Items will be diligently pursued to completion.

(d) Port Response. With respect to the Vertical Project, Port will respond within thirty (30) days after its receipt of the Architect's Certificate. If Port does not issue a Certificate of Completion for the Vertical Project substantially in the form of ***Exhibit N*** as requested under ***Section 17.1(a)*** (Submittals), then, within 15 business days after the expiration of Port's thirty (30) day review period, Port will deliver to Vertical Developer a notice specifying the reasons it did not issue the requested Certificate of Completion and the reasonable acts or measures that Vertical Developer must take to obtain a Certificate of Completion. Vertical Developer may submit revised Architect's Certificates and a new request for a Certificate of Completion under ***Section 17.1(a)*** (Submittals) at any time after completing the specified acts or measures.

17.2. ***Completion of PKN Project*** . For purposes of this Agreement only, acceptance of all Port Acceptance Items, in accordance with ***Section 16***, acceptance of all Sub-Surface Improvements by the Acquiring Agency in accordance with the Public Improvement Agreement, and the issuance of the Certificate of Completion will be Port's conclusive determination that Vertical Developer has Completed the PKN Project and, effective upon the issuance of the Certificate of Completion, other than the terms and conditions of this Agreement that expressly survive termination, this Agreement will terminate. Port's determination will not impair Vertical Developer's release as provided in ***Article 4*** (Release), Port's right to Indemnity under Vertical Developer's obligation to Indemnify the City Parties in ***Section 13.10(b)(v)*** and ***Article 22*** (Indemnification), or Port's rights to require Vertical Developer to correct any defects, all of which expressly survive termination of this Agreement. Port's issuance of a Certificate of Completion will not relieve Vertical Developer or any other person from the PKN

Development Requirements or compliance with applicable Laws, including applicable building, fire, or other code requirements, conditions to occupancy of any improvement, or other applicable Laws. This ***Section 17.2*** will survive the expiration or earlier termination of this Agreement.

18. PORT/CITY COSTS.

18.1. ***Port/City Costs***. In addition to any Attorney's Costs due pursuant to ***Section 25.9***, Vertical Developer will pay an amount to the Port toward the costs incurred or to be incurred by Port and the City related to the negotiation and implementation of this Agreement and the PKN Project in the amount of Three Hundred Fifty Thousand and 00/100 Dollars ($350,000) (the "**Port/City Costs Payment**"). The Port/City Costs Payment shall be paid at the Close of Escrow. Upon payment to Port of the Port/City Costs Payment, Vertical Developer's obligation to reimburse Port for Port Costs and City Costs incurred in connection with the negotiation and implementation of the Agreement and the PKN Project will be satisfied, and Vertical Developer will have no further obligation to reimburse the Port, as to such Port Costs or the Port or the City as to such City Costs. The Port/City Costs Payment shall not satisfy any Impact Fees or Exactions, Administrative Fees or any costs incurred by Vertical Developer from costs imposed by the Port or the City in its regulatory capacity, as a Regulatory Agency.

19. DEFAULTS; REMEDIES.

19.1. ***Default by Vertical Developer***. The occurrence after the Closing Date of any one of the following events or circumstances will constitute a "**Vertical Developer Default**:"

(a) **Unauthorized Transfer**. Vertical Developer causes or permits the occurrence of a Transfer not permitted under this Agreement and such failure continues for a period of five (5) business days following Vertical Developer's receipt of notice thereof from Port;

(b) **Failure to Pay**. Vertical Developer fails to pay when due any amount required to be paid hereunder, or fails to pay any taxes or assessments on the Property when due (including CFD assessments), and such failure continues for a period of five (5) business days following Vertical Developer's receipt of notice thereof from Port;

(c) **Intentionally Omitted**

(d) **Failure to Complete PKN Horizontal Improvements in Accordance with Schedule of Performance**. Vertical Developer fails to Substantially Complete a PKN Horizontal Improvement or submit Compliance Requests for a Horizontal Improvement consistent with the requirements of ***Section 16.1*** (Compliance Requests) in accordance with the schedule of performance provided in ***Section 15.10***, as may be extended by events of Force Majeure; provided, however, it shall not be a Vertical Developer Default if Port exercises its right to construct the applicable PKN Horizontal Improvement in accordance with ***Section 15.11***;

(e) **Phased Construction of Condominium Units**. If the Vertical Project is constructed in phases, Vertical Developer fails to design the project so as to construct at least 104,680 square feet of residential Gross Floor Area in the first phase of the Vertical Project in accordance with ***Section 14.3***;

(f) **Failure to Pay Transfer Fee**. Vertical Developer fails to pay when due the Transfer Fee to be paid hereunder, and such failure continues for a period of five (5) business days following Vertical Developer's receipt of notice thereof from Port;

(g) **Failure to Comply with Vertical Developer Restrictive Covenants, Generally**. Vertical Developer is in default after the expiration of all notice and cure periods under the Vertical Developer Restrictive Covenants and fails to cure the same in accordance with the terms thereof;

(h) **Intentionally Omitted**;

(i) **20th Street Plaza Security**. Vertical Developer

(i) fails to provide 20th Street Plaza Security as required pursuant to ***Section 15.8*** and such failure continues for thirty (30) days following receipt of notice from Port to Vertical Developer; provided that if such default is not reasonably capable of being cured within such 30-day period, such failure shall not constitute an Vertical Developer Default so long as Vertical Developer commences the cure of such default within such 30- day period, diligently prosecutes such cure and completes such cure within ninety (90) days after delivery of notice from Port, or

(ii) once it has provided 20th Street Plaza Security, fails to maintain the same as required herein, and such failure continues for 45 days following receipt of notice from Port to Vertical Developer;

(j) **Abandonment**. Vertical Developer Commences Construction of a PKN Horizontal Improvement, but ceases all work relating to such PKN Horizontal Improvement or abandons the related portion of the PKN Improvement Area (within the meaning of Cal. Civ. Code § 1951.2 or a successor statute) for more than 120 consecutive days (except in instances caused by a Force Majeure event) or a total of 180 days (which need not be consecutive and except in instances caused by a Force Majeure event), unless approved by Port Director, and does not cure the default within 45 days after Port delivers notice to Vertical Developer; provided that if such default is not reasonably capable of being cured within such 45- day period, such failure shall not constitute an Vertical Developer Default so long as Vertical Developer commences the cure of such default within such 45- day period, diligently prosecutes such cure to completion and completes such cure within 90-days after delivery of notice from Port;

(k) **Defective or Nonconforming Work**. Prior to the acceptance of a PKN Horizontal Improvement pursuant to Section ***16.6***, Port finds any of the work done or materials furnished for such PKN Horizontal Improvement to be defective or nonconforming to the approved PKN Improvement Plans, Project Requirements, and applicable Laws during the Warranty Period, and Vertical Developer fails to correct such defective or nonconforming within 45 days after Port delivers notice to Vertical Developer; provided that if such default is not reasonably capable of being cured within such 45- day period, such failure shall not constitute an Vertical Developer Default so long as Vertical Developer commences the cure of such default within such 45- day period, diligently prosecutes such cure to completion and completes such cure within 90-days after delivery of notice from Port;

(l) **Insolvency**. Vertical Developer initiates or is the subject of an Insolvency proceeding, if not released, dismissed, or stayed within 120 days;

(m) **Final Judgment**. Prior to Port's acceptance of the PKN Horizontal Improvements and payment by Vertical Developer of all Transfer Fees owed to Port pursuant to ***Section 14.3***, Vertical Developer fails to satisfy a final judgment in Port's favor in an action for payment or performance within 60 days after the judgment becomes final or any longer period specified in the judgment;

(n) **Generally**. Vertical Developer fails to perform any other obligation required to be performed under this Agreement by Vertical Developer, and such failure continues beyond the period of time for cure thereof or the expiration of any grace period specified in this Agreement therefor, or if no such cure or grace period is specified, within thirty (30) days after Vertical Developer's receipt of notice thereof from Port as appropriate, or in the case of a default that is curable but is not susceptible of cure within thirty (30) days, Vertical Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed one hundred twenty (120) days (subject to events of Force Majeure).

19.2. ***Default by Port***. It will constitute a "**Port Default**" under this Agreement, if after the Closing Date, Port fails to perform any of its covenants, agreements or obligations under

this Agreement, and such failure continues beyond the period of time for cure thereof or the expiration of any grace period specified in this Agreement therefor, or if no such cure or grace period is specified, within thirty (30) days after Port's receipt of notice thereof from Vertical Developer, or, in the case of a default that is curable but is not susceptible of cure within thirty (30) days, if Port fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion, but in no event to exceed one hundred twenty (120) days (subject to events of Force Majeure).

19.3. ***Port Remedies for Vertical Developer Default***.

(a) **General**. During the continuance of a Vertical Developer Default, Port will have all rights and remedies available at law or in equity, including the right to institute such proceedings as may be necessary, including action to cure the default or to seek specific performance or other injunctive relief, and the remedies set forth in the Special Provisions, unless a remedy for a particular Vertical Developer Default is otherwise specified herein as an exclusive remedy.

(b) **Nonpayment**. During the continuance of a Vertical Developer Default under ***Section 19.1(b)***, in addition to all other available remedies, Port will not be obligated to reimburse Vertical Developer for its outstanding PKN Capital Costs as provided for in the Financing Plan until Vertical Developer has paid all taxes and assessments (including CFD and IFD assessments), including associated fines and penalties. Any Claim by Port for consequential, incidental or punitive damages arising from Vertical Developer's failure to pay Facilities Special Taxes or other property taxes shall be limited to damages actually incurred by Port arising from (i) a delay or decrease in the payment of Facilities Special Taxes or property taxes, or (ii) a delay or the inability to issue debt supported by Facilities Special Tax from the Property or property taxes, as applicable, or (iii) a decrease in the net proceeds of such debt, based solely on Vertical Developer's failure to timely pay such Facilities Special Taxes or property taxes, as applicable, and only on the portion of such debt supported directly by the Facilities Special Tax or property taxes, as applicable, payable by Vertical Developer. Except as set forth in the immediately foregoing sentence, Vertical Developer shall not be liable to Port under this Agreement for consequential, incidental or punitive damages (including, but not limited to, lost opportunities and lost profits) arising solely from any other Vertical Developer's failure to pay taxes and assessments.

(c) **Intentionally Omitted**

(d) **Failure to Complete PKN Horizontal Improvements in Accordance with Schedule of Performance**. During the continuance of a Vertical Developer Default pursuant to ***Section 19.1(d)***, as Port's exclusive remedies, (i) Port will not reimburse Vertical Developer for its Interest Costs (as defined in the Financing Plan) for the applicable PKN Horizontal Improvement accrued during the Delay Period, (ii) Port may construct the PKN Horizontal Improvements pursuant to ***Section 15.11***, and (iii) Port may call on the 20th Street Plaza Security.

(e) **Phased Construction of Condominium Units**. During the continuance of a Vertical Developer Default pursuant to ***Section 19.1(e)***, as Port's exclusive remedies, Port has the right, in its sole discretion to (i) withhold issuance of a building permit and/or (ii) reject a request by Vertical Developer for schematic design review of the Vertical Project.

(f) **Intentionally Omitted**.

(g) **Intentionally Omitted**.

(h) **20th Street Plaza Security**.

(i) During the continuance of a Vertical Developer Default pursuant to ***Section 19.1(i)(i)***, Port shall not be obligated to issue a building permit for the PKN Project.

(ii) During the continuance of a Vertical Developer Default pursuant to ***Section 19.1(i)(ii)***, Vertical Developer will immediately suspend all activities other than those needed to preserve the condition of the PKN Horizontal Improvements or as necessary for health or safety reasons on affected portions of the PKN Improvement Area during any period during which the 20th Street Plaza Security is not maintained as required by this Agreement and, in addition to all other available remedies, Vertical Developer shall pay Port a fine of One Thousand and 00/100 Dollars ($1,000.00) per day commencing on the 46th day following receipt of notice from Port to Vertical Developer for each day the default continues without cure.

(i) **Abandonment**. During the continuance of a Vertical Developer Default under ***Section 19.1(j)***, in addition to all other available remedies, Port may call on performance and payment bonds for PKN Horizontal Improvements. In addition, Port shall have no obligation to pay the PKN Capital Costs incurred by Vertical Developer.

(j) **Defective or Nonconforming Work**. During the continuance of a Vertical Developer Default under ***Section 19.1(k)***, in addition to all other available remedies, Port will not be obligated to reimburse Vertical Developer for its outstanding PKN Capital Costs as provided for in the Financing Plan until the defect or nonconformity is corrected to the Acquiring Agency's satisfaction.

19.4. ***Vertical Developer's Remedies for Port Default***. Except as specifically provided below in this ***Section 19.4***, during the continuance of a Port Default after the Closing Date, Vertical Developer's remedy is limited to an action for specific performance and injunctive relief. Port will not be liable to Vertical Developer for any actual monetary damages except as set forth in the last paragraph of ***Section 8.3***, and ***Sections 9.2*** and ***25.9***. Other than as set forth in the preceding sentence, Port will not be liable to Vertical Developer for any damages whether caused by a Port Default and in no event will Port be liable for any actual, consequential, incidental or punitive damages. The source of funds for any breach of a reimbursement or payment obligation under the Financing Plan by Port to Vertical Developer will be limited solely to the sources of funds available under the Financing Plan for reimbursement to Vertical Developer and such liability, if any, will be capped by the actual amount owed to Vertical Developer under the Financing Plan, plus the Interest Cost permitted in the Financing Plan for such amount owed.

19.5. ***Limitation on Port Liability***. Except as expressly set forth in ***Sections 10.4(c) and 19.4***, Port will not have any liability whatsoever for monetary damages, and in no event, will Port be liable for any actual, consequential, incidental or punitive damages, including, but not limited to, lost opportunities, lost profits or other damages of a consequential nature under this Agreement.

19.6. ***No Implied Waivers***. No waiver made by a waiving Party with respect to the performance or manner or time thereof (including an extension of time for performance) of any obligations of another Party, or of any condition to the waiving Party's own obligations, will be considered a waiver of the waiving Party's rights with respect to any obligation of another Party or any condition to the waiving Party's own obligations beyond those expressly waived in writing.

19.7. ***Limitation on Personal Liability***. No natural person, including any commissioner, member, supervisor, officer, director, employee, representative, attorney, shareholder, limited partner, heir, legal representative, or member of a Party, will be personally liable to another Party in the event of any default or for any amount that may become due to a Party under this Agreement, provided the foregoing will not (i) limit any liabilities that exist under a security instrument in favor of the Port or that exist under applicable law, or (ii) release obligations of a Person that otherwise has liability for such obligations, such as the general partner of a partnership that, itself, has liability for the obligation.

19.8. ***Rights and Remedies Cumulative*** Except as expressly limited by this Agreement, the Parties' respective rights and remedies with respect to a default are cumulative. An Aggrieved Party's exercise of any one or more of its remedies for a default by the Breaching Party will not preclude its exercise, at the same or different times, of any of its other remedies. Each Party acknowledges its intent to limit its remedies for a default by the other Party to those specified in this Agreement.

20. FINANCING; RIGHTS OF MORTGAGEES.

The rights and obligations of each Party related to any deed of trust, mortgage, or other security instrument against the Property is set forth in ***Schedule 20*****.**

21. ECONOMIC OPPORTUNITY MATTERS.

21.1. ***Local and First Source Hiring***. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62, as amended from time to time (the **"Local Hiring Requirements"**). In connection with the construction of the PKN Project, Vertical Developer agrees to comply with all applicable provisions of the Local Hiring Requirements, as set forth in San Francisco Administrative Code Chapter 82, and the City's First Source Hiring Program as set forth in Chapter 83 of the of the San Francisco Administrative Code, each as may be amended from time to time. Before starting the PKN Project, Vertical Developer shall contact City's Office of Economic Workforce and Development to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

Vertical Developer shall include, and shall require its contractors to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Vertical Developer shall cooperate, and require its contractors to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Vertical Developer's failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

21.2. ***Prevailing Wages and Working Conditions***. Vertical Developer agrees to comply with all applicable prevailing wage requirements, including, but not limited to any applicable requirements in the California Labor Code, the City and County of San Francisco Charter, or the City and County of San Francisco's Administrative Code.

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from the Property or the PKN Improvement Area comprises a public work if a) paid for in whole or part out of public funds or b) performed on property sold by the Port or the City within the meaning of Chapter 23, Article VII of the San Francisco Administrative Code. As such, in connection with the construction of the PKN Project, Vertical Developer shall comply with the provisions of Article II of Chapter 6 of the San Francisco Administrative Code. Further, Vertical Developer shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code,

(B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) pay prevailing wages and employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, **"Prevailing Wage Requirements")**. Vertical Developer agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Vertical Developer shall include and shall require its contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Vertical Developer's failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek any remedy provided by law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Vertical Developer shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Property as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

21.3. ***Local Business Enterprises***. The Port Commission encourages the participation of local business enterprises (**"LBEs"**) in Vertical Developer's operations. Vertical Developer agrees to consult with CMD to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: http://sfgov.org/cmd/lbe-certification-0.

22. INDEMNIFICATION.

22.1. ***Indemnification by Vertical Developer***.

(a) **<u>General Indemnity</u>**.

(i) *Intentionally Omitted*.

(ii) *Following Close of Escrow*. Except to the extent caused by the gross negligence or willful misconduct of a City Party, Vertical Developer must Indemnify the City Parties against any and all Losses incurred by a City Party first arising from and after the Close of Escrow directly or indirectly from:

(1) Vertical Developer's failure to obtain any Regulatory Approval necessary to develop and construct the PKN Project in accordance with the Scope of Development or to comply with any Project Requirement for the PKN Project, as more particularly set forth in ***Section 13.10(b)(v)***;

(2) any personal injury or property damage occurring on any portion of the Property while under Vertical Developer's ownership or control;

(3) any Vertical Developer Party's acts or omissions in relation to construction, management, or operations at the Property including patent and latent defects and mechanic's or other liens to secure payment for labor, service, equipment, or material;

(4) In addition, to the foregoing, Vertical Developer will Indemnify the City Parties from and against all Losses (if a City Party has been named in any action or other legal proceeding) incurred by a City Party arising directly or indirectly out of or connected with contracts or agreements (i) to which no City Party is a party, (ii) entered into by Vertical Developer in connection with its performance under this Agreement, except to the extent such Losses were caused by the gross negligence or willful misconduct of a City Party. For purposes of the foregoing sentence, no City Party will be deemed to be a "party" to a contract solely by virtue of having approved the contract under this Agreement (e.g., an Assignment and Assumption Agreement).

(b) Hazardous Materials Indemnity. In addition to the Indemnity under ***Section 22.1(a)*** (General Indemnity), the terms and provisions ***Schedule 22.1*** will apply.

22.2. ***Indemnification for Breach of Representations***. Vertical Developer agrees to Indemnify the City Parties from and against any and all Losses arising from any breach of express representation, warranty or covenant by made by Vertical Developer in ***Section 25.4*** (Representations).

22.3. ***Defense of Claims***. Subject to the express terms of any Indemnity obligation hereunder, Vertical Developer's Indemnification obligations under this Agreement are enforceable regardless of the active or passive negligence of the City Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the City Parties. Vertical Developer specifically acknowledges that it has an immediate and independent obligation to defend the City Parties from any Loss that actually or potentially falls within the Indemnification obligations of Vertical Developer, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Vertical Developer and continues at all times thereafter until finally resolved. Vertical Developer's Indemnification obligations under this Agreement are in addition to, and in no way, will be construed to limit or replace, any other obligations or liabilities which Vertical Developer may have to Port in this Agreement, at common law or otherwise.

22.4. ***Survival of Indemnification Obligations***. The terms and provisions of this ***Article 22*** will survive the expiration or termination of this Agreement, provided, however, that Vertical Developer (a) shall not have any liability or indemnification obligations hereunder with respect to the PKN Horizontal Improvements or the Port Acceptance Items to the extent that such liability arises out of or in connection with any acts, events, circumstances or matters first occurring after the date of Port's acceptance of the PKN Horizontal Improvements and all Port Acceptance Items, and (b) shall not have any liability or indemnification obligations hereunder to the extent that such liability arises out of or in connection with any acts, events, circumstances or matters first occurring or first arising after the date any third party actually acquires ownership of the Property pursuant to an Assignment and Assumption Agreement.

23. TRANSFER AND ASSIGNMENTS.

23.1. ***Before Close of Escrow***. Vertical Developer's right to purchase the Property pursuant to this Agreement is personal to Vertical Developer. Accordingly, Vertical Developer may not Transfer this Agreement before Close of Escrow without the prior written consent of Port, which may be granted, withheld, or conditioned in its sole discretion (except for a Transfer to an Affiliate of Vertical Developer for which no consent shall be required). Port shall approve or disapprove any requested transfer or assignment within thirty (30) days after receipt of a written request for approval from Vertical Developer. The Parties agree that if Port consents to a Transfer, all Net Transfer Proceeds will be paid to Port. The Vertical Developer may assign this Agreement to an Affiliate of Vertical Developer upon fifteen (15) business days' prior

written notice to Port. Any such assignment shall provide for the assumption of all of the Vertical Developer's rights and obligations under this Agreement by written agreement in form and substance reasonably satisfactory to Port.

23.2. ***Additional Definitions***.

"**Affiliate**" means any Person directly or indirectly Controlling, Controlled by or under Common Control with the other Person in question.

"**Assignment**" means an assignment, conveyance, hypothecation, pledge (other than from and after Close of Escrow, a pledge in connection with any mezzanine financing which will not require prior Port approval), or otherwise transfer of all or any of Vertical Developer's interest in this Agreement.

"**Cash Consideration**" means (a) cash or (b) cash equivalents.

"**Control**" means with respect to any Person (a) the possession, directly or indirectly, of the power to direct or cause the direction of the day to day management, policies or activities of such Person whether through ownership of voting securities, by contract or otherwise (excluding customary limited partner or non-managing member approval rights) (it being agreed and understood that the right to approve certain major decisions shall not, in and of itself, be deemed to be Control of a Person and a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to customary "major decision" consent or approval rights of limited partners, shareholders or members, as applicable), or (b) the ownership (direct or indirect) of more than fifty percent (50%) of the ownership interest of such Person (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof).

"**Controlled**" and "**Controlling**" have correlative meanings.

"**Excluded Transfer**" means any of the following: (a) Vertical Developer's grant of a Mortgage and the exercise of customary remedies under any financing of Vertical Developer or any constituent owner thereof; (b) the exercise of customary limited partner or non-managing member remedies under a partnership or limited liability company operating agreement, as applicable; (c) a change resulting from death or legal incapacity of a natural person; (d) the sale, transfer or issuance of less than the Controlling interest of stock of Vertical Developer that is listed on a nationally or internationally recognized stock exchange in a single transaction or a related series of transactions; (e) the assignment, transfer, or addition of any limited partner interests, non-managing member interests or preferred equity interests in the Vertical Developer or in any direct or indirect member of the Vertical Developer; or (f) the granting of temporary or permanent easements or permits to facilitate development of the Project.

"**Net Transfer Proceeds**" means before Close of Escrow, Transfer Proceeds less the transferor Vertical Developer's reasonable Attorneys' Fees and Costs incurred by Vertical Developer in connection with a Transfer.

"**Non-Cash Consideration**" means consideration received by Vertical Developer in connection with a Sale that is not Cash Consideration.

"**Significant Change**" means any change in the direct or indirect ownership of Vertical Developer that results in a change in Control of Vertical Developer; provided, however, in no event will any Excluded Transfer be deemed a Significant Change.

"**Transfer**" means an Assignment or a Significant Change.

"**Transfer Proceeds**" means all consideration received by or for the account of Vertical Developer in connection with a Transfer, including Cash Consideration, the principal amount of any loan made by Vertical Developer to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price. A commitment by an owner (whether direct or indirect) of Vertical Developer to fund its share of future capital calls to

construct the Vertical Project, in and of itself, will not be considered or deemed to be "**Transfer Proceeds**."

23.3. ***After Close of Escrow***.

(a) **Vertical Developer's Right to Transfer Before Certificate of Completion**.

(i) *Conditions to Transfer After Commencement of Construction but Before Certificate of Completion*. Subject to ***Sections 23.3(a)(iii)*** and ***23.3(a)(vi)***, after Commencement of Construction, but before Port's issuance of a Certificate of Completion, Vertical Developer will not suffer or permit any Transfer to occur, without the prior written consent of Port, which consent may not be unreasonably withheld by Port if each of the following conditions is satisfied:

(1) In the case of an Assignment only, the proposed transferee executes and delivers an Assignment and Assumption Agreement, which Assignment and Assumption Agreement must contain:

(A) An express assumption by the proposed transferee, for itself and its successors and assigns, and expressly for the benefit of Port, of all of the obligations of Vertical Developer arising from or after the effective date of the Transfer under this Agreement and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to this Agreement directly relating to the PKN Project, and an express agreement by the proposed transferee to be subject to all of the conditions and restrictions to which Vertical Developer is subject;

(B) A representation by the proposed transferee that it has conducted a thorough investigation and due diligence of the Property; and

(C) A release by the proposed transferee of the City Parties and the State Lands Indemnified Parties and waiver of any and all Losses against the City Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the City Parties arising prior to the effective date of the Transfer.

(2) The any deed conveying the Property, if applicable, has been submitted to Port for its review, or at the request of Vertical Developer, such document is made available for Port's review at Vertical Developer's office in San Francisco;

(3) There is no Vertical Developer Default or unmatured Vertical Developer Default under this Agreement or any of the other documents or obligations to be assigned to the proposed transferee where Vertical Developer or proposed transferee have not made provisions to cure the applicable default, which provisions are satisfactory to Port in its sole discretion;

(4) (1) in the case of a Significant Change, Vertical Developer must be a Qualified Transferee immediately following the consummation of such Significant Change; and (2) in the case of an Assignment, the proposed transferee is a Qualified Transferee;

(5) Vertical Developer provides to Port an estoppel certificate substantially in the form attached hereto as ***Exhibit P***, which estoppel certificate will be effective as of the effective date of Transfer;

(6) Port agrees to execute and deliver to the Vertical Developer and, if requested, any Qualified Transferee, any lender (or prospective lender) and any assignee or transferee of Vertical Developer's obligations hereunder, within 30 days after a request is made, an estoppel certificate with regard to the following matters: (A) this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement

is in full force and effect as modified, and stating the modifications or if this Agreement is not in full force and effect, so stating), (B) to Port's actual knowledge, whether there is default under this Agreement by either Party, or whether Port is aware of any act or omission which, with the passage of time or notice or both, would result in a default or breach of this Agreement; and (C) any other matter actually known to Port, directly related to this Agreement and reasonably requested by the requesting Party.

(7) Port receives on or prior to the effective date of Transfer sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Transfer provided, however, if Port has not delivered to Vertical Developer an invoice for Attorneys' Fees and Costs prior to the effective date of Transfer, Vertical Developer will reimburse Port for same within ten (10) business days of receipt of such invoice.

(ii) *No Limitation*. It is the intent of this Agreement, to the fullest extent permitted by Law and equity, that no Transfer of this Agreement, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of the benefits under this Agreement or any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property that Port would have had, had there been no such Transfer.

(iii) *Mortgaging of Interest*. Notwithstanding anything herein to the contrary, at any time during the Term of this Agreement, Vertical Developer has the right, without Port's consent, to sell, assign, encumber or transfer its interest in this Agreement to a lender or other purchaser in connection with the exercise of remedies under the provisions of a Mortgage, subject to the limitations, rights and conditions set forth in ***Schedule 20***.

(iv) *Limitation on Liability*. From and after an Assignment of all of the transferor's (including Transferor's) interest in this Agreement, the transferor (including Transferor) will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Assignment. In no event will the transferor (including Transferor) be liable for a new default first arising after the date of such Assignment. The effectiveness of any Assignment hereunder is not in any way to be construed to relieve the transferor tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor tenant hereunder before the date of such Assignment. In connection with any such Assignment, upon request from Transferor, Port will promptly execute documentation evidencing the foregoing release of obligations and liabilities; provided, failure to do so will not invalidate or limit the effect of the release set forth in this ***Section 23.3(a)(iv)***.

(v) *Notice of Significant Changes; Reports to Port*. Vertical Developer will promptly notify Port of any and all Significant Changes.

(vi) *Transfers Not Requiring Port Consent Before Certificate of Completion*. Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of an Excluded Transfer or a Transfer to a Vertical Developer Affiliate.

(b) Vertical Developer's Right to Transfer After Certificate of Completion. Notwithstanding any other provision of this Agreement after the issuance of a Certificate of Completion, Vertical Developer may Transfer all or any portion of the Vertical Project and the Property without prior notice to or consent from the Port.

(c) No Restriction on Certain Matters. The provisions of this ***Article 23*** will not be deemed to prohibit or otherwise restrict (1) the granting of authorizations to facilitate the development, operation and use of the Property, in whole or in part, (2) the grant or creation of a Mortgage or mezzanine financing, (3) the sale or transfer of the Property or a portion thereof or any interest therein pursuant to foreclosure or the exercise of a power of sale contained in a Mortgage or any other remedial action in connection therewith, or a conveyance or transfer

thereof in lieu of foreclosure or exercise of such power of sale, or (4) any Transfer to Port, the City, City Agencies or any other Governmental Entity.

(d) Conditions Precedent. The Transferee, upon taking title of the Transferred Property will succeed to all of Vertical Developer's rights (including without limitation the right to Transfer) and obligations under this Agreement.

23.4. ***Limitation on Liability***. From and after a Transfer, the transferor (including Transferor) will be released from all obligations, duties and liability under this Agreement to the extent first arising after the date of such Transfer. In no event will transferor (including Transferor) be liable for a new default first arising after the date of such Transfer. The foregoing release will not in any way to be construed to relieve the transferor (including Transferor) of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor (including Transferor) hereunder before the date of such Transfer. In connection with any such Transfer, upon request from transferor, Port will promptly execute documentation evidencing the foregoing release of obligations and liabilities; provided, failure to do so will not invalidate or limit the effect of the release set forth in this ***Section 23.4***.

23.5. ***Restrictions on Port Transfer***. Unless otherwise prohibited by Law, Port agrees not to transfer any portion of the Property or any interest therein acquired by it to any Person where such transfer would preclude Port's or Vertical Developer's performance under this Agreement or the uses, densities, rights or intensity of development contemplated under this Agreement or the Vertical Development Requirements. Port shall be permitted to Transfer the Property to the City to facilitate the sale of the Property.

23.6. ***Sale of Individual Condominium Units***.

(a) Non-Applicability of Transfer Restrictions.

(i) Notwithstanding any other provision of this Agreement, the provisions relating to Transfers will not apply to buyers of individual Condominium Units and parking spaces for which, on or before the date of sale, a certificate of occupancy has been issued.

(ii) Port will not: (A) require notice or assumption of obligations for sales or subsequent re-sales of any such Condominium Units; (B) require notice or assumption of obligations, if any, for the transfer of Condominium Unit project condominium common areas; nor (C) impose any obligations with respect to completion of the improvements on individual Condominium Units for which a Final Certificate of Occupancy has been issued.

(iii) Vertical Developer will include in each purchase and sale agreement for a Condominium Unit a full waiver and release of any and all Claims against the City Parties resulting from (A) Vertical Developer's completion of, or failure to complete, all or any part of the PKN Project, (B) Horizontal Developer's completion of, or failure to complete, all or any part of the Horizontal Improvements, (C) Port or the City's failure to complete any part of the Pier 70 Project, and (D) the payment by the buyer or seller of any Condominium Unit of any fees set forth in the Transfer Fee Covenant.

(iv) This ***Section 23.6*** is for the express benefit of Vertical Developer, and nothing herein will be construed to: (A) confer on an individual Condominium Unit purchaser the status of transferee or Vertical Developer or (B) provide such purchaser, as opposed to Vertical Developer, with the right to request a Certificate of Completion for an individual Condominium Unit.

(v) No buyer of any individual Condominium Unit will be subject to the obligations or have the rights of Vertical Developer under this Agreement, the Vertical Developer Restrictive Covenants, or the right to request a Certificate of Completion. The Parties hereto acknowledge that any of the Vertical Development Requirements that are binding on

Condominium Units will be included in recorded documents that run with the applicable Condominium Units.

24. PORT AND CITY SPECIAL PROVISIONS.

Vertical Developer will comply with Port and City Special Provisions attached hereto as ***Exhibit Q***.

25. GENERAL PROVISIONS.

25.1. ***General Applicability***. The provisions of this Section 25 shall apply to all Transaction Documents.

25.2. ***Notices***.

(a) **Manner of Delivery**. Any notices (including notice of approval or disapproval, demands, waivers, and responses to any of them) required or permitted under any Transaction Document must be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid, return receipt requested; or (c) overnight delivery by a nationally recognized delivery service or the United States Postal Service, delivery charges prepaid.

(b) **Required Information**. To be effective, a notice must be in writing or be accompanied by a cover letter that, to the extent applicable:

(i) cites the section of the Transaction Document under which the notice is given;

(ii) indicates whether a response or other action is required and, if so, the period of time within which the recipient must respond or otherwise act;

(iii) for a potential breach, is prominently marked "Notice of Default"; and

(iv) is clearly marked "Request for Approval" if approval is being requested.

(c) **Effective Date**. A notice will be deemed to be delivered and effective:

(i) on the date personal delivery actually occurs;

(ii) on the business day after the business day it is deposited for overnight delivery; or

(iii) on the date of actual delivery or on which delivery is refused as shown on the return receipt if mailed.

(d) **Address; Change of Address**. Notices must be delivered to the addresses below, unless superseded by a notice of a change in address for notices that is delivered in accordance with ***Section 25.2(a)***.

Port:

Port of San Francisco
Port General Counsel
Office of the City Attorney
Pier 1
San Francisco, CA 941111
Re: Pier 70 (Parcel K North)

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Director of Real Estate and Development
Re: Pier 70 (Parcel K North)

_____
_____
_____

with a copy to:	Port of San Francisco Pier 1 San Francisco, CA 94111 Attn: General Counsel Re: Pier 70 (Parcel K North)
Vertical Developer:	[_____], LLC 7121 Fairway Drive, Suite 410 Palm Beach Gardens, Florida 33418 Attn: General Counsel
with a copy to:	Orrick, Herrington & Sutcliffe LLP 777 South Figueroa Street, Suite 3200 Los Angeles, California 90017 Attn: Randolph Perry, Esq.
	TMG Partners 100 Bush Street, 26th Floor San Francisco, CA 94104 Attention: Lynn Tolin
	TMG Partners 100 Bush Street, 26th Floor San Francisco, CA 94104 Attention: General Counsel
	Presidio Bay Ventures 1160 Battery Street, Suite 250 San Francisco, CA 94111 Attention: Cyrus Sanandaji

(e) Convenience Copies. Except as explicitly permitted under specific circumstances, a Party must not give notice by facsimile or electronic mail, but any Party may deliver a copy of a notice by facsimile or electronic mail as a courtesy or for convenience. The effective date of a notice will not be affected by delivery of a convenience copy by facsimile or electronic mail.

25.3. ***Amendments/Technical Changes***. The Transaction Documents may be amended or modified only by a written instrument signed by the Vertical Developer and Port. Without limiting the foregoing, Vertical Developer and Port may correct any inadvertent error to the Transaction Documents or any of their exhibits or implementing documents that is contrary to the Parties' intention in the identification or characterization of or any reference to any title exception, legal description, boundaries of any parcel, map or drawing, or the text, or otherwise agree to minor changes that do not materially and adversely affect the PKN Project (as reasonably determined by Vertical Developer). Any agreed change will be effected by a signed

memorandum or replacement pages. A memorandum or replacement sheet will not be deemed an amendment of the Transaction Document as long as any adjustments are relatively minor and do not result in a material change as determined by the Parties in consultation with counsel. Any memorandum will become a part of this Agreement or the affected document when fully executed. Material modifications to the Transaction Documents may require the approval of either or both the Port Commission and the Board of Supervisors, each of which may give or withhold approval in its sole discretion unless explicitly stated otherwise.

25.4. ***Representations and Warranties of Vertical Developer***. Vertical Developer represents and warrants to Port as of the Effective Date and as of the Close of Escrow as follows:

(a) That Vertical Developer is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware. Vertical Developer is duly qualified, in good standing, and authorized to do business under the laws of the State of California. Vertical Developer has all requisite power and authority to conduct its business as presently conducted.

(b) That Vertical Developer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Vertical Developer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it will immediately notify Port of same and the reasons therefore together with any relevant facts or information requested by Port.

(c) That the Transaction Documents, and all documents executed by Vertical Developer: (i) are and at the time of Closing will be duly authorized, executed and delivered by Vertical Developer; (ii) are and at the time of Closing will be legal, valid and binding obligations of Vertical Developer; and (iii) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject. The Transaction Documents will be legal, valid and binding obligations of Vertical Developer, enforceable against Vertical Developer in accordance with their terms.

(d) That Vertical Developer has all requisite power and authority to execute and deliver the Transaction Documents and to carry out and perform all of the terms and covenants of the Transaction Documents.

(e) None of Vertical Developer's formation documents, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Vertical Developer to enter into and perform all of the terms and covenants of the Transaction Documents. Vertical Developer is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. Except as set forth herein, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Vertical Developer of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened in writing lawsuits or proceedings or undischarged judgments affecting Vertical Developer before any court, governmental agency, or arbitrator that is reasonably expected to materially and adversely affect the enforceability of the Transaction Documents or the business, operations, assets or condition of Vertical Developer.

(f) The execution, delivery and performance of the Transaction Documents (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Vertical Developer or by which Vertical Developer's assets may be bound or affected, (B) to Vertical Developer's knowledge, any Law, or (C) the certificate of formation or the operating agreement of Vertical Developer, and (ii) do not and will not result in the creation or imposition of any lien or other

encumbrance upon the assets of Vertical Developer (other than the lien of a Mortgage in accordance with this Agreement).

(g) There is no material adverse change in Vertical Developer's financial condition and Vertical Developer is meeting its current liabilities prior to any delinquency; no federal or state tax liens have been filed against it; and Vertical Developer is not in default or claimed default beyond all applicable notice and cure periods under any agreement for borrowed money.

(h) Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties will survive the Closing Date.

25.5. ***Governing Law***. The Transaction Documents will be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code. All legal actions related to the Transaction Documents will be instituted in the Superior Court of the City and County of San Francisco, State of California, in any other appropriate court in the City or, if appropriate, in the Federal District Court in San Francisco, California.

25.6. ***Merger of Prior Agreements***. The Transaction Documents collectively, together with all preamble paragraphs, recitals, exhibits, schedules, and other attachments, contain any and all representations, warranties and covenants made by Vertical Developer and Port and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. No prior drafts of any Transaction Document or changes from those drafts to the executed versions may be introduced as evidence in any litigation or other dispute resolution proceeding by any person, and no court or other body may consider those drafts in interpreting any Transaction Document. Any prior correspondence, memoranda or agreements are replaced in total by the Transaction Documents together with the exhibits hereto.

25.7. ***Parties and Their Agents***. The term "**Vertical Developer**" as used herein will include the plural as well as the singular. If Vertical Developer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Vertical Developer will be joint and several. As used herein, the term "**Agents**" when used with respect to either party will include the agents, employees, officers, contractors and representatives of such party.

25.8. ***Interpretation of Agreement***.

(a) **Exhibits, Schedules, and Attachments**. Each exhibit, schedule or attachment are a part of the Transaction Document to which they are attached or into which they are expressly incorporated by reference. Each schedule attached to a Transaction Document is provided for reference when implementing the PKN Project. The Parties agree that each Transaction Document and all attachments may be revised from time to time by agreement based on changed circumstances and experience in the course of the PKN Project. Each Party (including any applicable affected Transferee) will confirm its agreement by signing the revised document in counterparts, which will be deemed to be attached to each counterpart of the revised document and will supersede the document being revised.

(b) **Captions**. Whenever a section or paragraph is referenced, it refers to the specific Transaction Document unless otherwise specifically identified. The captions preceding the sections of the Transaction Documents and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of the Transaction Documents.

(c) **Words of Inclusion**. The use of the term "including", "include", "such as" or words of similar import when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to

refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) **No Presumption Against Drafter**. The Transaction Documents have been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, the Transaction Documents will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of any Transaction Document (including California Civil Code Section 1654).

(e) **Costs and Expenses**. The Party on which any obligation is imposed in a Transaction Document will be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) **Agreement References**. Wherever reference is made to any provision, term or matter "in the [Transaction Document]," "herein," "hereof," or similar terms will be deemed to refer to any reasonably related provisions of the Transaction Document in which the reference appears in the context of the reference, unless the reference refers solely to a specific provision of the Transaction Document.

25.9. ***Attorneys' Fees***. If either Party hereto fails to perform any of its respective obligations under the Transaction Documents or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of the Transaction Documents, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will, after a final, non-appealable judgment, pay any and all reasonable costs and expenses incurred by the prevailing party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and Attorneys' Fees and Costs. For purposes of the Transaction Documents, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

25.10. ***Time of Essence***. Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

25.11. ***No Merger***. The obligations contained herein that expressly survive the Closing will not merge with the transfer of title to the Property but will remain in effect until fulfilled.

25.12. ***Non-Liability of City Officials, Employees and Agents***. Notwithstanding anything to the contrary in the Transaction Documents no elective or appointive board, commission, member, officer, employee or agent of City will be personally liable to Vertical Developer, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Vertical Developer, its successors and assigns, or for any obligation of City under the Transaction Documents.

25.13. ***Joint and Several Liability***. If Vertical Developer consists of more than one person, then the obligations of each under any Transaction Document will be joint and several. City and Port shall be jointly and severally liable for the obligation to deliver the Deed.

25.14. ***Performance Generally***.

(a) **Time**.

(i) Time is of the essence in the performance of all of the terms and conditions of each Transaction Document.

(ii) Subject to this Section, all required performance dates including cure deadlines, expire at 5:00 p.m. Pacific Standard or Daylight Savings Time, as applicable, on the stated date, unless extended under the Transaction Document under which performance is due. Any reference to a week, quarter, or month without reference to a specific day will mean the last day in the period.

(iii) If a Party must give notice or take any other action within a specified minimum number of days that would not fall on a business day, then the Party must take the action on the preceding business day. For example, if a Party is required to give at least five days' prior notice of an action and the fifth day before the desired action falls on a Sunday, the Party must give notice by the next business day.

(iv) In all other cases, if the last day of any period to take an action occurs on a day that is not a business day, then the last day for undertaking the action is extended to the next business day. For example, if a Party has 30 days to cure a default, and the 30th day is a Saturday, the Party would have until the next business day to effect the cure.

(b) **Extensions of Time**.

(i) Each Party, acting in its sole discretion, may agree to extend the date for the other Party's performance of any term, covenant, or condition, or the other Party's exercise of any rights under the Transaction Document, without executing an amendment. A Party may impose reasonable conditions on an extension of the other Party's time to cure a default. No extension of time will release any of the obligations subject to the extension or waive the granting Party's rights in relation to any other term, covenant, or condition of or any other default in the performance or breach of the Transaction Document under which the extension is granted.

(ii) Any extension of time requiring Port Commission approval must be made by a resolution adopted at a public meeting. All other extensions will be made by a countersigned writing.

(c) **Waivers**. None of the following circumstances will waive an Aggrieved Party's rights or remedies with respect to a default, including its right to prosecute any actions it deems necessary to enforce its rights or remedies.

(i) Party's failure to give notice or delay in giving notice or asserting any of its rights or remedies as to a default will not waive or delay the date on which the default occurs.

(ii) A Party's waiver as to a specific default right, or remedy will not be a waiver of any other default, right, or remedy.

(d) **Responsibility for Costs**. The Party on which any obligation is imposed will be solely responsible for paying all costs incurred in performing the obligation, unless specifically provided otherwise.

25.15. ***No Limitation on Unrelated Rights***. The rights and remedies under the Transaction Documents do not supersede or preclude any Party's exercise of its rights and remedies under other agreements and documents, or of the City, the Port, or any other Regulatory Agency to require compliance with any Regulatory Approval or other entitlement granted for the Project.

25.16. ***No Joint Venture or Partnership***. Nothing in any Transaction Document to which Vertical Developer is a Party, or in any document Vertical Developer executes in connection with the Transaction Documents, will create a joint venture or partnership between the City and Vertical Developer or between the Port and Vertical Developer. Vertical Developer is not acting as the agent of the City or the Port, nor is the City or the Port acting as the agent of Vertical Developer in any respect under any Transaction Document. Vertical

Developer is not a state or governmental actor with respect to any of its activities under the Transaction Documents.

25.17. ***Inconsistent Provisions***. Vertical Developer and the City Parties intend for any Transaction Document addressing specific rights and obligations to prevail over any inconsistent provisions in any other any Transaction Document. This general rule will apply to the primary Transaction Document as amended from time to time.

25.18. ***Severability***. Unless specifically provided otherwise, a final judgment invalidating any provision of any Transaction Document, or its application to any person, will not affect any other provision of the Transaction Document or its application to any other person or circumstance. All other provisions of the Transaction Document will continue in full force and effect, except to the extent that enforcement of the Transaction Document as affected by the final judgment would be unreasonable or grossly inequitable under all the circumstances or would frustrate a fundamental purpose of the Transaction Documents.

25.19. ***Counterparts***. The Transaction Documents may be executed in multiple counterparts, each of which will be deemed to be an original and that together will be one instrument. Parties may deliver their counterparts by electronic mail or other electronic means of transmission.

25.20. ***Further Assurances***. The parties agree to execute such instruments or to do such further acts as may be reasonably necessary to carry out the provisions of each Transaction Document; provided, however, that no party will be obligated to provide such instruments and to do such further acts that would materially increase such party's liabilities hereunder or materially decrease such party's rights hereunder. The provisions of this ***Section 25.20*** will survive the Closing.

25.21. ***Advance Writings Required***.

(a) **Amendments and Waivers**. Any amendment or waiver of any provision of any Transaction Document must be in writing and signed on behalf of each Party by a person authorized to do so. Material modifications to Transaction Documents may require the approval of either or both the Port Commission and the Board of Supervisors, each of which may give or withhold approval in its sole discretion unless explicitly stated otherwise.

(b) **Approvals and Waivers**. Whenever a Party's approval or waiver is required: (i) the approval or waiver must be obtained in advance and in writing; and (ii) except as specified otherwise, the Party whose approval or waiver is sought must not unreasonably withhold, condition, or delay its approval or waiver, as applicable.

(c) **Specific Application**. A Party's waiver or consent in reference to another Party's performance of or any condition to its obligations under a Transaction Document will not be a waiver of or consent to any other performance or condition.

25.22. ***Plans on Record with Port***. The most recent versions of the Exhibits, as such Exhibits may be amended or supplemented from time to time in accordance with this Agreement or the terms of such Exhibits, will not be required to be recorded but will be kept on file with Port. Full color copies of all recorded documents are also on file with Port. All documents on file with Port will be made available to members of the public at reasonable times in keeping with Port's standard practices.

25.23. ***Survival; Effect of Termination***. Any release, partial release, expiration or termination of this Agreement will not affect any provision of this Agreement that, by its express term, is intended to survive the expiration or termination of this Agreement. Upon any termination of this Agreement before issuance of the final Certificate of Completion by reason of a Vertical Developer Default, Vertical Developer will not have the right to proceed with the Vertical Project improvements or PKN Horizontal Improvements and any additional construction must proceed, if at all, under the terms of a new vertical disposition and

development agreement with Port or, with the written agreement of Port, a reinstatement of this Agreement with appropriate agreed upon revisions.

25.24. ***Words of Inclusion*** . The words "including," "such as," or similar terms when following any general term must not be construed to limit the term to the specific terms that follow, whether or not followed by language of non-limitation, such as "without limitation," "including, but not limited to," or similar words, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term and to be followed by the phrase "without limitation" or "but not limited to."

25.25. ***Gender and Number*** . Wherever the context requires, gender-specific and gender-neutral references are deemed to include the masculine, feminine, and gender-neutral, and references to the singular are deemed to include the plural and vice versa.

25.26. ***Numerals*** . For purposes of calculations under any Transaction Document, fractions will not be rounded up or down. A numeral will prevail over any conflicting spelled out number.

25.27. ***Statutory References***. References to specific code sections mean San Francisco Municipal Ordinances unless otherwise specified or required by context. References to any law mean the law as in effect on the Effective Date and as amended at the time in question, unless specifically stated otherwise.

25.28. ***Enforced Delay; Extension of Times of Performance***. Notwithstanding anything to the contrary contained in the Transaction Documents, failure by either Party to perform shall not be deemed a default hereunder and times for performance shall be extended as provided herein where delays are due to events of Force Majeure; provided, however, that the Party claiming the existence of a Force Majeure delay and an extension of its obligation to perform shall notify the other Party in writing of the nature of the matter causing the delay and such notice shall be provided to the other Party within sixty (60) Days from the date of knowledge of the commencement of the cause of the Force Majeure delay. The extension of time to perform shall commence to run from the time of the commencement of the cause and shall continue only for the period of the Force Majeure delay.

26. DEFINITIONS.

Each defined term must be interpreted to encompass all correlating plural and singular nouns, verb tenses and forms, adjectives, adverbs, and other forms of the term. The following examples of the application of definitions to correlating terms are illustrative only and are not intended to limit the application of the examples used or the meaning of this Paragraph.

•"Assign" applies to "Assignment," "Assignee," "Assignor," and "Assigned."

•"Begin construction" applies to "began to construct," "beginning construction," and "has begun to construct."

•"Indemnify" applies to "indemnity," "indemnification," and "indemnitor."

•"Substantial Completion" applies to "substantially complete."

•"Third party" applies to "third-party" and "third parties."

•"Waive" applies to "waiver," "waivers," "waived," and "waiving."

For purposes of this Agreement, initially capitalized terms will have the meanings ascribed to them in this Article:

"**20th Street Plaza**" is defined in ***Recital F***

"**20th Street Plaza Improvement Plans**" mean Improvement Plans for the 20th Street Plaza.

"20th Street Plaza Security" is defined in ***Section 15.8(a).***

"**28-Acre Site**" is defined in ***Recital A***.

"**28-Acre Site Project**" is defined in ***Recital A***.

"Acquiring Agency" means the Regulatory Agency (Port, SFPUC, or SFPW) that will acquire PKN Horizontal Improvements in accordance with this Agreement, the Financing and Acquisition Agreement, and all applicable Laws.

"**Acquisition Event of Default**" is defined in ***Section 10.1***.

"**Administrative Fees**" means a fee imposed by Port or the City in their respective regulatory capacities, that is in effect at the time and payable upon the submission of an application for any permit or approval, which is intended to cover only the estimated actual costs to City or Port of processing that application and inspecting work undertaken pursuant to that application and to reimburse the City or Port for its administrative costs in processing applications for any permits or approvals required under the Vertical Development Requirements.

"**Adverse Market Conditions**" mean Vertical Developer's determination in its reasonable judgement based on economic and market conditions that it is infeasible to Transfer Condominium Units upon or after Completion of the Vertical Project

"**Affiliate**" is defined in ***Section 23.1***.

"**Agents**" is defined in ***Section 25.7***.

"**Agreement**" means this Vertical Disposition and Development Agreement.

"**Agreement to Comply with CFD Matters**" is defined in ***Section 3.3(a)***.

"Aggrieved Party" means the Party alleging that a Breaching Party has committed a default under the terms of this Agreement.

"**AIC**" is defined in ***Section 14.1(c)***.

"**Architect**" means a design professional duly licensed by the State of California designated by Vertical Developer from time to time to issue the Architect's Certificate.

"**Architect's Certificate**" means a certificate from the Architect in the form attached hereto as ***Exhibit M***, verifying Completion of the Vertical Project for purposes of the issuance of a Certificate of Completion.

"As-Built Drawings" means Permit Set drawings and specifications of Improvements in their final form and as-built field documents prepared during the course of construction.

"**Assessment Shortfall**" means the positive difference between: (i) the amount of property taxes that would have been levied on the Property by application of the ad valorem tax on its Baseline Assessed Value, as escalated to the date of determination by annual increases and reassessment following a transfer; and (ii) the amount of property taxes actually levied on the Property after Reassessment.

"**Assessor Information**" is defined in ***Section 13.15***.

"**Assignment**" is defined in ***Section 23.1***.

"**Assignment and Assumption Agreement**" means an assignment of this Agreement in substantially the form of ***Exhibit R*** attached hereto.

"**Attorneys' Fees and Costs**" means reasonable attorneys' fees and related costs incurred in an action or as otherwise indicated in this Agreement, including all costs of litigation, administrative or other judicial or quasi-judicial proceeding, such as fees and related costs of attorneys, consultants, testing, and experts, and costs for document copying, exhibit preparation, carriers, postage, and communications.

"**BAAQMD**" means the Bay Area Air Quality Management District.

"**Baseline Assessed Value**" means the assessed value of the Property in the City Fiscal Year in which the Chief Harbor Engineer issues the related Final Certificate of Occupancy.

"**Board of Supervisors**" and "**Board**" means the San Francisco Board of Supervisors.

"**Bonds**" means any bonds or other forms of indebtedness secured and payable by one or more of Housing Tax Increment, Mello-Roos Taxes, or Tax Increment issued on behalf of any financing district, to implement the Financing Documents.

"**Breaching Party**" means a Party alleged to have committed a default under this Agreement.

"**Broker**" is defined in ***Section 9.2***.

"**Cal OSHA**" means the California Occupational Safety and Health Administration.

"**CC&Rs**" is defined in ***Section 14.1(a)***.

"**Certificate of Completion**" means a certificate executed by Port that Vertical Developer has Completed the construction of the Vertical Project in accordance with all the provisions of this Agreement.

"**CFD**" is defined in ***Schedule 3.1***.

"**CFD Matters**" is defined in ***Schedule 3.1***.

"**Chief Harbor Engineer**" means Port's Deputy Director, Engineering, or his designee.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**City Costs**" means the actual and reasonable costs incurred by City (other than Port) in performing its obligations under this Agreement (including any costs or fees charged by the Planning Department for design review of conceptual designs for consistency with the SUD and Design for Development), except for (i) any defense costs as set forth in ***Section 22.3 and 25.9***, and (ii) work and fees covered by Administrative Fees.

"**City Fiscal Year**" means the period beginning on July 1 of any year and ending on the following June 30.

"**City Parties**" and "**City Party**" are defined in ***Section 4.4***.

"**Claims**" means a written 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 Vertical Project or at the Property during the Term of this Agreement.

"**Close of Escrow**" and "**Closing**" are defined in ***Section 2.2(b)***.

"**Closing Costs**" are defined in ***Section 9.1***.

"**Closing Date**" means the date when Closing occurs.

"CMD" means the Contract Monitoring Division of the City's General Services Agency.

"**Commence Construction**", "**Commencement of Construction**" and any variation thereof means the commencement of substantial physical construction as part of a sustained and continuous construction plan. Vertical Developer's physical work on "site improvements", as that term is defined in California Civil Code Section 3102, without its commencement of the permanent foundation, does not constitute Commencement of Construction.

"**Complete**", "**Completed**" or "**Completion**" means completion by Vertical Developer of all aspects of the Vertical Project in accordance with the approved Construction Documents, or provision of security satisfactory to Port for any Deferred Items, and issuance of applicable

temporary certificates of occupancy (or their functional equivalent) for the Vertical Project, together with completion of all improvements which are specifically required as a matter of law for occupancy of the entire Vertical Project under the conditions of any Regulatory Approvals.

"Compliance Determination" is defined in ***Section 16.4(b)***.

"Compliance Request" is defined in ***Section 16.1.***

"**Condominium**" means an estate in real property (i) consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, and/or commercial building on such real property, such as an apartment, office, store, or residential building with ground floor retail, or (ii) as defined in California Civil Code Sections 783, California Civil Code Division 4, Part 5, Chapter 1 or any successor statute or code, intended for residential or commercial/retail use, as shown on a duly filed final subdivision map, parcel map, or condominium plan of the Property or any portion thereof, and any fractional interest thereof, including, without limitation, timeshare interests as defined in California Business and Professional Code Section 11212(x) derived therefrom, lying within the Property.

"**Condominium Unit**" means each individual unit within a Condominium.

"**Construction Documents**" means (i) schematic design documents approved by Planning Director or Port under the SUD, (ii) site permits and/or building permits issued by Port for the PKN Project, and (iii) the PKN Improvement Plans.

"**Control**" is defined in ***Section 23.1***.

"**County Assessor**" means the Assessor-Recorder of the City and County of San Francisco.

"**Current Assessed Value**" means the Property's Baseline Assessed Value as escalated or reassessed on the date of determination.

"**Deed**" is defined in ***Section 3.1(a)***.

"**Deferred Items**" is defined in ***Section 17.1(c)***.

"**Delay Period**" means that period commencing after the deadline for performance under ***Section 15.10*** until Substantial Completion of or submission of a Compliance Request (as applicable) for the applicable PKN Horizontal Improvement.

"**Delegation of Authority to Vote**" is defined in ***Section 12.3***.

"**Deliver**" or "**Delivery**" means conveyance of the Property by City to Vertical Developer by quitclaim deed.

"**Deposit**" is defined in ***Section 2.2(a)***.

"**Design Advisory Committee**" is defined in ***Section 15.4(d)***.

"**Design for Development**" means the Pier 70 Design for Development approved by the Port Commission by Resolution No. 17-45 and the Planning Commission by Motion No. 19980, as amended from time to time.

"**Development Documents**" means (i) the SUD and the PKN Tentative Map; (ii) the Design for Development; and (iii) approved Construction Documents; and (iv) the Streetscape Master Plan.

"**Development Easements**" is defined in ***Section 3.4(a)***.

"**Easement Action**" is defined in ***Section 13.4***.

"**Effective Date**" means the date on which both parties have executed this Agreement.

"**Environmental Laws**" mean all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof as those terms are defined in ***Schedule 22.1***), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Property, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this Lease. "Environmental Laws" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**Escrow Agent**" means the Title Company acting in its capacity as the escrow agent for the transaction.

"**Exaction**" means any requirement to construct improvements for a public purpose, dedicate a real property interest, or other burden 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.

"**Final Certificate of Occupancy**" means a certificate of occupancy that the Chief Harbor Engineer issues under Port Building Code allowing all portions of a building to be occupied.

"**Final EIR**" means the environmental impact report for the SUD Project that the Planning Commission certified on August 24, 2017.

"**Final Map**" means a final subdivision map meeting the requirements of the Subdivision Map Act of California (Calif. Gov't Code §§ 66410-66499.37) and the Subdivision Code.

"**Finally Granted**" means that the action is final, binding and non-appealable and all applicable statutes of limitation relating to such action, including with respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to such action.

"**Financing Plan**" is defined in ***Section 13.5(b)***.

"**FOG Ordinance**" means Sections 140-140.7 of Article 4.1 of the San Francisco Public Works Code, or any subsequent amendment or replacement of the same that sets forth prohibitions, limitations and requirements for the discharge of fats, oils and grease into the City's sewer system by food service establishments.

"**Force Majeure**" means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of such Party, including, but not restricted to, acts of nature or of the public enemy, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, and unusually severe weather, inability to obtain materials or reasonably acceptable substitute materials (provided that Vertical Developer has ordered such materials on a timely basis and Vertical Developer is not otherwise at fault for such inability to obtain materials), and delays of contractors or subcontractors due to any of the foregoing causes. Force Majeure does not include (i) failure to obtain financing or failure to have adequate funds, (ii) sea level rise, or (iii) any event that does not cause an actual

delay. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make additional repairs or obtain additional Regulatory Approvals that would not have otherwise been required but for the Force Majeure event. If Vertical Developer is diligently proceeding to obtain necessary building permits or Regulatory Approvals for the PKN Horizontal Improvements as required hereunder, Force Majeure includes Developer's inability to obtain in a timely manner building permits or other Regulatory Approvals ("**Permit Force Majeure**"); provided, however, in no event will Force Majeure exceed twelve (12) months

"**Gross Floor Area**" is defined in the Design for Development.

"**Hard Costs**" are defined in the Financing Plan.

"**Hazardous Material**" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. "Hazardous Materials" also includes any chemical identified as a "constituent of concern" in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"**Historic Core Project**" is defined in ***Recital A***.

"**Horizontal DDA**" means that certain Disposition and Development Agreement between the City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission, and FC Pier 70, LLC, a Delaware limited liability company, dated for reference purposes only as of May 2, 2018.

"**Horizontal Developer**" is defined in ***Recital A***.

"**Horizontal Documents**" is defined in ***Section 3.1(c)***.

"**Horizontal Improvements**" means those capital facilities and infrastructure built or installed in or to serve the 28-Acre Site and adjacent areas or other public purposes that are the obligation of Horizontal Developer under the Horizontal DDA, including, Site Preparation, Shoreline Improvements, Public Spaces, Public ROWs, Utility Infrastructure and Deferred Infrastructure (as those terms are defined in the Horizontal DDA).

"ICA" means the Interagency Cooperation Agreement between various City agencies and departments and Port, dated as of May 2, 2018, establishing procedures for City review of the 28-Acre Site Project.

"**IFD**" is an acronym for Infrastructure Financing District No. 2 (Port of San Francisco), formed by Ordinance No. 27-16.

"**IFD Termination Date**" means the respective dates on which all allocations to the IFD of Tax Increment from each Sub-Project Area and the IFD's authority to repay indebtedness with Tax Increment from each Sub-Project Area end under Appendix G-2.

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

"**Improvement Plans**" means drawings and other documents for the PKN Horizontal Improvements that Vertical Developer submit for approval in accordance with this Agreement.

"Improvement Plan Submittal" means a set of Improvement Plans for PKN Horizontal Improvements for review by Regulatory Agencies and Port under ICA § 4.4(d) (Plan Submittals).

"**In-Lieu Transfer Payment**" is defined in ***Section 14.3***.

"**Indemnify**" means indemnify, protect, defend and hold harmless. "**Indemnification**" and "**Indemnity**" have correlative meanings.

"**Independent Contract Consideration**" is defined in ***Section 2.2(c)***.

"Insolvency" 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.

"**Laws**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, ordinances, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" will refer to any or all Laws as the context may require and includes Environmental Laws.

"**LBEs**" is defined in ***Section 21.3***.

"**LDN**" is defined in ***Section 14.6(a)***.

"**License**" is defined in ***Section 13.5(d)(i)***.

"**LMAX**" is defined in ***Section 14.6(a)***.

"**Local Hiring Requirements**" is defined in ***Section 21.1***.

"**Losses**" means, when used in reference to a Claim, any actual loss, liability, damages, compensation, contribution, cost recovery, lien, obligation, interest, injury, penalty, fine, action, judgment, award, or costs (including reasonable Attorneys' Fees and Costs), or reasonable costs to satisfy a final judgment of any kind, known or unknown, contingent or otherwise, except to the extent specified in this Agreement.

"**Master Lease**" is defined in ***Recital A***.

"**Map Act**" means the Subdivision Map Act of California (Calif. Gov't Code §§ 66410-66499.37).

"**McEnerney Action**" is defined in ***Section 3.1(e)***.

"**Memorandum of VDDA**" is defined in ***Section 7.3(a)(ii)***.

"**Michigan Street**" is defined in ***Recital F***.

"**Michigan Street Plaza**" means that portion of Michigan Street commencing from the end of the Michigan Street Row and proceeding south to the to-be-created 21st Street.

"**Michigan Street ROW**" means that portion of Michigan Street commencing from 20th Street and proceeding 150 feet south toward the to-be-created 21st Street.

"**Michigan Street Improvement Plan**" means the Improvement Plans for Michigan Street ROW and Michigan Street Plaza.

"**Minimum Net Worth Amount**" means Twenty-Seven Million Five Hundred Thousand and 00/100 Dollars ($27,500,000.00), which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Effective Date and every ten (10) years thereafter.

"Mitigation Fee Act" means chapter 5, division 1, title 7 of California Government Code, beginning with section 66000.

"Mitigation Measure" means any measure identified in the Mitigation Monitoring and Reporting Program required to minimize or eliminate material adverse environmental impacts of the PKN Project and any additional measures necessary to mitigate adverse environmental impacts that are identified through the CEQA process for any future Regulatory Approval.

"**Mitigation Monitoring and Reporting Program**" means the Mitigation Monitoring and Reporting Program adopted by the Planning Commission for the Pier 70 Project on August 24, 2017, by Motion 19977, and attached hereto as ***Exhibit F***.

"**Mortgagee**" is defined in ***Schedule 20***.

"**Net Worth Requirement**" means, with respect to a proposed transferee, the proposed transferee has a net worth (inclusive of its equity in the Property) equal to at least the Minimum Net Worth Amount, less any debt to be secured by the proposed transferee's interest in the Property.

"**Notice of Transfer Fee Covenant**" is that certain notice of the Transfer Fee Covenant in the form attached hereto as ***Exhibit C-2A*** and to be recorded in the Official Records.

"**Notice of Special Tax**" is defined in ***Section 12.5***.

"**Official Records**" means the official records of the City and County of San Francisco.

"**Outside Closing Date**" is defined in ***Section 7.2***.

"**Owner's Affidavit**" is defined in ***Section 3.6***.

"**Parcel K North**" is defined in ***Recital A***.

"**Party**" means Port or Vertical Developer, as a party to this Agreement. "Parties" means both Port and Vertical Developer, as parties to this Agreement.

"Permit Set" means a subset of Improvement Plans as described in clause (ii) and clause (iii) of ***ICA Section 4.4(d)*** (Plan Submittals).

"**Permitted Encumbrances**" is defined in ***Section 3.1(a)***.

"**Permitted Port Title Exceptions**" is defined in in ***Section 3.1(b)***.

"**Person**" means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

"**Pier 70 Project**" means the development of Horizontal Improvements and Vertical Improvements within the 28-Acre Site in accordance with the Horizontal DDA and Horizontal Documents.

"**Pier 70 Projects**" means the Pier 70 Shipyard, the Historic Core Project, and the 28-Acre Site Project.

"**Pier 70 Risk Management Plan**" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"**Pier 70 Shipyard**" is defined in ***Section 14.1(b)***.

"**Pier 70 WTRS**" is defined in ***Section 14.4***.

"**Pier 70 WTRS Plan**" is defined in ***Section 14.4***.

"**PKN Capital Costs**" is defined in the Financing Plan.

"**PKN Construction Obligations**" means Vertical Developer's obligation to construct the PKN Project consistent with Project Requirements.

"**PKN Development Requirements**" means PKN Horizontal Improvements Requirements and the Vertical Development Requirements.

"**PKN Final Map**" means the Final Map for the PKN Project.

"**PKN Horizontal Improvements**" is defined in ***Recital F*** hereof.

"**PKN Horizontal Improvements Requirements**" means those certain requirements for construction of the PKN Horizontal Improvements that are contained in: (i) the Development Documents; (ii) approved Construction Documents; and (iii) this Agreement.

"**PKN Improvement Area**" means that certain property owned by Port adjacent to the Property as further described in the License, encompassing the 20th Street Plaza and Michigan Street.

"**PKN Improvement Plans**" means the Michigan Street Improvement Plans and the 20th Street Plaza Improvement Plans.

"**PKN Project**" is defined in ***Recital F***.

"**PKN Tentative Map**" means the Tentative Map for the PKN Project, as defined in ***Section 5.2(b)***, as it may be amended.

"**Port**" or "**Port Commission**" means the San Francisco Port Commission.

"Port Acceptance Items" means the completed PKN Horizontal Improvements identified on ***Exhibit B*** that the Port Commission may accept.

"**Port Costs**" means the actual and reasonable costs incurred by Port in connection with the negotiation and implementation of this Agreement and the PKN Project, except for (i) any defense costs as set forth in ***Section 22.3***, and (ii) work and fees covered by Administrative Fees. Port Costs shall include costs of Port Development Project Management, Port Engineering Project Management, Port Planning, Port Finance, and City Attorney, and any third party costs incurred by the Port in connection with negotiation and implementation of this Agreement and the PKN Project, except for involvement of any of these Port or City staff in permit review.

"**Port/City Costs Payment**" is defined in ***Section 18.1***.

"**Port Default**" is defined in ***Section 19.2***.

"**Port Director**" means the Executive Director of the Port.

"**Port Title Defect**" is defined in ***Section 6.3(a)***.

"**Port VDDA Execution**" means full execution of this Agreement following approval by the Board of Supervisors, in its sole and absolute discretion, not later than 135 days after Vertical Developer's execution of this Agreement.

"**Prevailing Wage Requirements**" is defined in ***Section 21.2***.

"**Project Requirements**" is defined in ***Section 13.1***.

"**Property**" is defined in ***Recital A***.

"**Property Conditions**" is defined in ***Section 4.1.***

"Public Improvement Agreement" means an agreement between the City and Vertical Developer under the Subdivision Code for the completion of required PKN Horizontal Improvements that are not complete when the PKN Final Map is approved.

"**Public ROWs**" means PKN 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 Space**" means PKN Horizontal Improvements for public enjoyment, such as public parks, public recreational facilities, public access, open space, and other public amenities, some of which may be rooftop facilities.

"**Purchase Price**" is defined in ***Section 2***.

"**Qualified Transferee**" means any transferee that satisfies each of the following criterion: (1) has, or has engaged a property manager with at least ten (10) years' experience developing or operating residential projects; (2) satisfies the Net Worth Requirement; and (3) is subject to jurisdiction of the courts of the State.

"**Reassessment**" means a reduction in ad valorem taxes assessed against a Taxable Parcel through a proceeding under the California Revenue & Taxation Code.

"**Regulatory Agency**" means a City Agency or federal, state, or regional body, administrative agency, commission, court, or other governmental or quasi-governmental organization with jurisdiction over any aspect of the Vertical Project or the 28-Acre Site Project.

"**Regulatory Approval**" means any motion, resolution, ordinance, permit, approval, license, registration, permit, utility services agreement, Final Map, or other action, agreement, or entitlement required or issued by any Regulatory Agency with jurisdiction over any portion of the PKN Project or the 28-Acre Site Project, as finally approved.

"**Requested Information**" is defined in ***Section 13.15***.

"**Required CC&R Provisions**" is defined in ***Section 14.1(a)***.

"**Residential Condominium Unit Owners Restrictive Covenants**" are those restrictive covenants attached hereto as ***Exhibit C-1B*** pertaining to use and operation of the Property by individiual owners of Condominium Units.

"**Restrictive Covenants**" means the Vertical Developer Restrictive Covenants and the Residential Condominium Unit Owners Restrictive Covenants.

"**RWQCB**" means the California Regional Water Quality Control Board for the San Francisco Bay Region.

"**Schematic Design Application**" is defined in ***Section 15.4(a)***.

"**Scope of Development**" is defined in ***Section 3.2***.

"Secured Amount" is defined in ***Section 15.8(a).***

"**SFDPH**" means the San Francisco Department of Public Health.

"**SFPUC**" is defined in ***Section 12.7***.

"**SFPW**" means San Francisco Public Works.

"Signage Plan" means one of the comprehensive signage plans that will cover the PKN Improvement Area, and buildings and provide for an interpretive signage program that Developer will submit to Port for approval.

"**Soft Costs**" are defined in the Financing Plan.

"**Special Provisions**" means the City requirements set forth in ***Article 24*** hereof.

"**State Lands Indemnified Parties**" is defined in ***Schedule 20.1***.

"Street and Utility Easement" means an easement or similar agreement relating to Public ROWs and various public utilities, including gas, sewer, water, and electrical service.

"**Streetscape Master Plan**" means the master plan for Public ROW Improvements (as defined in the Horizontal DDA) within the 28-Acre Site, to be submitted by Horizontal Developer and approved by the Port under Horizontal DDA ***Section 3.5(b)*** (Submittal for Review).

"**Subdivision Code**" means the San Francisco Subdivision Code and Subdivision Regulations.

"**Subdivision Map**" means any map that Developer submits for the Property under the Map Act and the Subdivision Code.

"**Subdivision Regulations**" means subdivision regulations adopted by San Francisco Department of Public Works from time to time and any exceptions and design modifications from the standards set forth therein to the extent necessary to achieve consistency with the requirements of the SUD.

"**Sub-Project Area**" means, individually or collectively, Sub-Project Area G 2, Sub-Project Area G 3, and Sub-Project Area G 4.

"**Sub-Project Area G 1**" means the sub-project area of IFD Project Area G consisting of the 20th Street Historic Core.

"**Sub-Project Area G 2**" means the sub-project area of IFD Project Area G described in Appendix G-2.

"**Sub-Project Area G 3**" means the sub-project area of IFD Project Area G described in Appendix G-3.

"**Sub-Project Area G 4**" means the sub-project area of IFD Project Area G described in Appendix G-4.

"**Sub-Surface Improvement**" means sub-surface improvements on Michigan Street to be accepted by an Acquiring Agency other than Port, including, in the event Port elects Switchgear Option 2, sub-surface improvements in 21st Street and Michigan Street south of 21st Street.

"**Substantial Completion**" means the completion of a PKN Horizontal Improvement to the point that it is available for use by the public, as determined by the Chief Harbor Engineer in his sole discretion, which may be prior to completion of all final punch list items or acceptance by the Port Commission.

"**Substantial Completion Determination Request**" is defined in ***Section 16.1***.

"**Substantial Completion Determination**" is defined in ***Section 16.2(b)***.

"**SUD**" means Planning Code Section 249.79 (the Pier 70 Special Use District), as amended from time to time.

"**SUD Project**" means the project, including the PKN Project as defined in the Final EIR.

"**Survey**" means a survey required by the Title Company to issue the title insurance policy described in the Title Commitment.

"**Switchgear Facilities**" is defined in ***Section 12.7***.

"**Switchgear Fee**" is defined in ***Section 12.7***.

"**Switchgear Option**" is defined in ***Section 12.7***.

"**Switchgear Option 1**" is defined in ***Section 12.7***.

"**Switchgear Option 2**" is defined in ***Section 12.7***.

"**Tax Increment**" refers to one or more of Allocated Tax Increment, Housing Tax Increment, the City Share of Tax Increment, ERAF Tax Increment, Gross Tax Increment, Port Tax Increment, and Project Tax Increment, as appropriate in the context (as such terms are defined in the Appendix to the Horizontal DDA).

"**Taxable Parcel**" means an assessor's parcel of real property or other real estate interest that is not exempt from taxation and assessments, including Taxable Commercial Parcels, Taxable Residential Units, and leased space occupied for private use in an Exempt Parcel (each as defined in the Horizontal DDA).

"**Taxes and Assessments**" is defined in ***Section 6.6(c)***.

"**Tentative Map**" means a tentative subdivision map or tentative parcel map submitted by an applicant and approved by the City in accordance with procedures under the Subdivision Code and Development Documents.

"**Term**" means the period commencing upon the Effective Date and ending upon Vertical Developer's receipt of the Certificate of Completion, unless otherwise terminated as provided for in this Agreement.

"**Title Commitment**" means a commitment by the Title Company that it will issue to Vertical Developer, an A.L.T.A. extended coverage title insurance policy, with such coinsurance or reinsurance and direct access agreements as Vertical Developer may request reasonably, in an amount designated by Vertical Developer which is satisfactory to the Title Company, insuring that the fee simple estate in the Property is vested in Vertical Developer subject only to the Permitted Title Exceptions, and with such A.L.T.A. form endorsements as may be requested reasonably by Vertical Developer.

"**Title Company**" is defined in ***Section 2.2(a)***.

"**TMA**" is defined in ***Section 3.5***.

"**Transaction Documents**" means this Agreement and the documents executed and delivered by Vertical Developer pursuant to ***Section 7.3(b)***.

"**Transfer**" is defined in ***Section 23.1***.

"**Transfer Fee Covenant**" is defined in ***Section 3.2***.

"**Transfer Fees**" is defined in ***Section 14.3***.

"**Transfer Payment**" is defined in ***Section 14.3***.

"**Transferee**" means any Person to which Vertical Developer assigns its rights and obligations under this Agreement in accordance with ***Article 23***.

"**Transferor**" means Vertical Developer, in its capacity as a transferor of its rights and obligations under this Agreement in accordance with ***Article 23***.

"**Unencumbered 10 Year Period**" is defined in ***Section 14.3***.

"**Unmatured Vertical Developer Event of Default**" means any default that, with the giving of notice or the passage of time, or both would constitute a Vertical Developer Acquisition Event of Default or Vertical Developer Default under this Agreement.

"**Vault Infrastructure**" is defined in ***Section 3.4(b)***.

"**Vault Infrastructure Easement**" is defined in ***Section 3.4(b)***.

"**VCA**" means the Vertical Cooperation Agreement to be executed between Vertical Developer and Horizontal Developer, as the same may be amended, supplemented, modified and/or assigned from time to time. The VCA may include provisions related to (i) sequencing and coordination of infrastructure work as between Horizontal Developer and Vertical Developer, (ii) each party's obligations related to liability for damage and restoration thereof, (iii) repaving obligations to the extent of any underground work performed after Horizontal Developer's paving, (iv) each party's obligations related to the formation, administration, maintenance and funding of the TMA, and (v) soil disposal arrangement.

"**Vertical Developer**" is defined in the preamble to this Agreement.

"**Vertical Developer Default**" is defined in ***Section 19.1***.

"**Vertical Developer Parties**" is defined in ***Section 9.2***.

"**Vertical Development Requirements**" means those certain requirements for development of the Property that are contained in: (i) the Development Documents; (ii) the Restrictive Covenants; (iii) approved Construction Documents; and (iv) this Agreement.

"**Vertical Developer Restrictive Covenants**" is defined in ***Section 3.2***

"**Vertical Project**" is defined in ***Recital F***.

"**Warranty Period**" is defined in ***Section 15.6***.

[SIGNATURES ON FOLLOWING PAGE]

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

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

By: _____
Elaine Forbes
Executive Director

Approved by Port Resolution No. ____ and
Board Resolution No. _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

VERTICAL DEVELOPER:

64 PKN OWNER, LLC,
a Delaware limited liability company

By: _____
Name: Diego Rico
Its: Vice President

EXHIBIT !πM

LEGAL DESCRIPTION

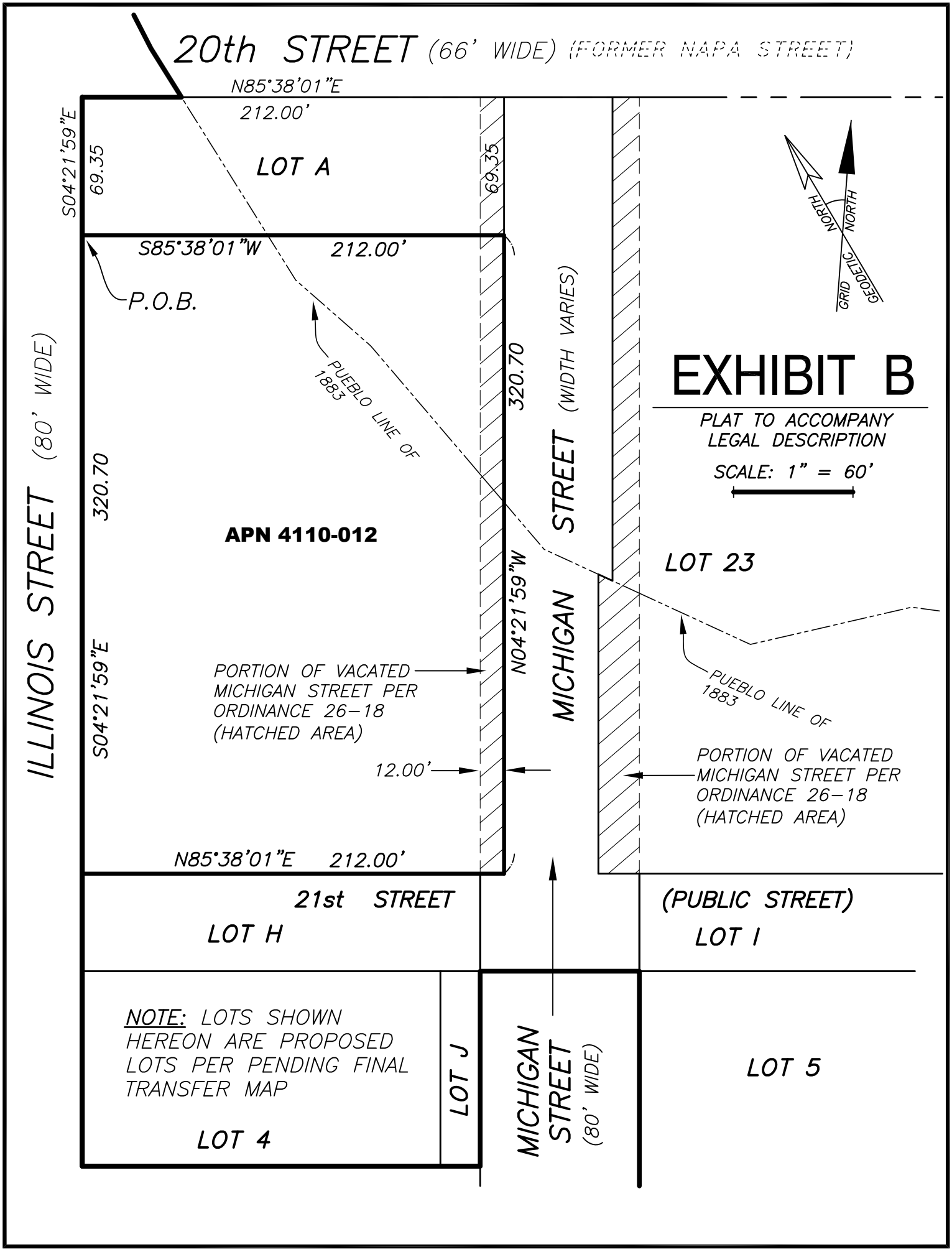
ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE), DISTANT THEREON SOUTH 04°21'59" EAST 69.35 FEET FROM THE INTERSECTION OF THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE) AND SAID EASTERLY LINE OF ILLINOIS STREET; THENCE ALONG SAID LINE OF ILLINOIS STREET, SOUTH 04°21'59" EAST 320.70 FEET; THENCE NORTH 85°38'01" EAST 212.00 FEET TO THE CURRENT WESTERLY LINE OF MICHIGAN STREET (VARYING WIDTH), AS SAID STREET EXISTS, FOLLOWING THE PARTIAL VACATION THEREOF, PER ORDINANCE NO. 265-18, EFFECTIVE DECEMBER 3, 2018 ; THENCE ALONG SAID CURRENT WESTERLY LINE OF MICHIGAN STREET NORTH 04°21'59" WEST 320.70 FEET; THENCE SOUTH 85°38'01" WEST 212.00 FEET TO SAID POINT OF BEGINNING, CONTAINING 67,988.40 SQUARE FEET, MORE OR LESS.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS BASED UPON THE BEARING OF NORTH 03°41'33" WEST BETWEEN SURVEY CONTROL POINTS NUMBERED 375 AND 376, OF THE HIGH PRECISION NETWORK DENSIFICATION (HPND), CITY & COUNTY OF SAN FRANCISCO 2013 COORDINATE SYSTEM (SFCS13).

APN: Block 4110, Lot 012

EXHIBIT A-2


20th STREET (66' WIDE) (FORMER NAPA STREET)
N85°38'01"E
212.00'
S04°21'59"E
69.35
LOT A
69.35
S85°38'01"W
212.00'
P.O.B.
PUEBLO LINE OF 1883
320.70
320.70
ILLINOIS STREET (80' WIDE)
APN 4110-012
MICHIGAN STREET (WIDTH VARIES)
N04°21'59"W
S04°21'59"E
PORTION OF VACATED MICHIGAN STREET PER ORDINANCE 26-18 (HATCHED AREA)
12.00'
LOT 23
PUEBLO LINE OF 1883
PORTION OF VACATED MICHIGAN STREET PER ORDINANCE 26-18 (HATCHED AREA)
N85°38'01"E
212.00'
21st STREET
(PUBLIC STREET)
LOT H
LOT I
NOTE: LOTS SHOWN HEREON ARE PROPOSED LOTS PER PENDING FINAL TRANSFER MAP
LOT J
MICHIGAN STREET (80' WIDE)
LOT 4
LOT 5
NORTH
GEODETIC NORTH
GRID
EXHIBIT B
PLAT TO ACCOMPANY LEGAL DESCRIPTION
SCALE: 1" = 60'

VDDA EXHIBIT H

PIER 1
SAN FRANCISCO, CA 94111

LICENSE TO USE PROPERTY

LICENSE NO. ____

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AND

[64 PKN OWNER, LLC],

[INSERT GENERAL LOCATION OF LICENSE AREA]

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILLMAN, COMMISSIONER
VICTOR MAKRAS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER

TABLE OF CONTENTS

BASIC LICENSE INFORMATION

License Date:	
License Number:	
Port:	**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Port's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Licensee:	64 PKN Owner, LLC, a Delaware limited liability company
Licensee's Main Contact Person and Mailing Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Billing Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Emergency Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Insurance Contact and Address (not broker):	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Parking Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:

Contact Information for Licensee's Agent for Service of Process:	
License Area:	The License Area is located in the Pier 70 area of the City and County of San Francisco, as more particularly shown on ***Exhibit A*** attached hereto and made a part hereof, together. The License Area may be adjusted from time to time by the parties as portions of the PKN Horizontal Improvements are accepted by Port or the City, as applicable, in accordance with Sections 16.5 (Port Commission Acceptance Action) and 16.6 (Acceptance of Sub-Surface Improvements) of the VDDA [**Note: At commencement, License Area may include either or both of the 20th Street Plaza and Michigan Street ROW and Plaza—revise accordingly.**]
Length of Term:	**[_____]**
Commencement Date:	**[_____]**
Expiration Date:	
License Fee:	This License is entered into in furtherance of Licensee's obligations under the Vertical Disposition and Development Agreement ("**VDDA**") by and between Port and Licensee, dated _____, 20[xx]. In consideration thereof, there is no License Fee due hereunder so long as Licensee uses the License Area for Permitted Activities only. [**Note: Licensee Fee waived for construction staging for the PKN Project and construction of the PKN Horizontal Improvements. There IS a License Fee for all other uses. Body of License will need to be revised re: License Fee for the other uses.**]
Environmental Security:	Environmental Oversight Deposit of $10,000. [**Note: Additional security dependent on type of activity and location.]**
Permitted Activity:	The License Area shall be used solely for the permitted activities described in ***Exhibit B*** attached hereto, as may be updated from time to time and appended hereto, for the construction of PKN Horizontal Improvements. **[Note: Include time restrictions in Exhibit B if applicable. Description of Permitted Activity will be refined from the VDDA Scope of Development.]**

Additional Prohibited Uses:	In addition to, and without limiting, the Prohibited Uses specified in Section 7 below, Licensee shall be prohibited from using the License Area for any of the following activities: (a) (b) Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.
Invasive Work:	Notwithstanding the foregoing, Licensee will provide Port prior written notice before it may enter the License Area to perform any Permitted Activity that involves invasive testing, excavation or construction ("**Invasive Work**"). Each written notice will identify the scope of Invasive Work, the anticipated date for commencement and the anticipated duration for the Invasive Work.
Cure Period where applicable:	-Five (5) business days after notice for failure to pay any Fees and/or all other charges hereunder. -One (1) day after notice if the Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion. -Five (5) business days after notice if Licensee defaults in its obligation to maintain insurance under the provisions of Article 21 set forth in ***Schedule 1*** (Provisions for Indemnity, Insurance and Hazardous Materials). -For any other non-monetary default not described above, thirty (30) days, or, if such cure cannot reasonably be completed within such 30-day period, if Licensee does not within such 30-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.
Maintenance and Repair:	See Section 9.3
Utilities and Services:	See Section 9.1 and 9.2
Location of Asbestos:	[If applicable, see ***Schedule 3*** attached hereto].
Economic Opportunity Matters:	Licensee will comply with Article 21 (Economic Opportunity Matters) of the VDDA in connection with Licensee's performance in the License Area of the Permitted Activities as if such plan and section were incorporated into this License except that any reference in such plan or section, as applicable, to (i) "**Developer**" or

	"**Vertical Developer**" will mean Licensee, (ii) "**Premises**," "**Property**" or "**Site**" will mean the License Area, and (iii) "**Project**", or similar words will mean the PKN Project.
Prepared By:	[_____]

LICENSE TO USE PROPERTY

1. BASIC LICENSE INFORMATION.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as licensor, and the party identified in the Basic License Information as licensee ("**Licensee**"). The Basic License Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this "**License**." In the event of any conflict or inconsistency between the Basic License Information and the License provisions, the Basic License Information will control.

2. GRANT OF LICENSE.

2.1. ***License***. In consideration of the stated conditions and agreements, Port hereby grants permission to Licensee to carry on the Permitted Activity within the License Area described in the Basic License Information and ***Exhibit A*** attached hereto.

2.2. ***Encroachment***.

(a) If Licensee or its Agents or Invitees uses or occupies space outside the License Area that is owned by Port without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Licensee shall promptly vacate such Encroachment Area and pay as an additional charge for each day Licensee used, occupied, uses or occupies such Encroachment Area, an amount equal to the square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Encroachment Area, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Licensee uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Licensee or its Agents or Invitees, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this License (including Licensee's obligation to Indemnify Port as set forth in this Section), at law or in equity.

(b) In addition, Licensee shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) following delivery of the notice to vacate, that Licensee has failed to vacate the Encroachment Area, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Vacate, if applicable, delivered by Port to Licensee following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area, issuance of each Notice to Vacate and survey of the Encroachment Area. Licensee's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of Section 14 below (Indemnity and Exculpation) shall also apply to Licensee's and its Agents' and Invitees' use and occupancy of the Encroachment Area as if the License Area originally included the Encroachment Area, and Licensee shall additionally Indemnify Port from

and against any and all loss or liability resulting from delay by Licensee in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within five (5) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 2.2 and the reasonableness of the amount of the charges described in this Section 2.2.

3. TERM; REVOCABILITY.

This License is a revocable, personal, non-assignable, [non-exclusive], and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the Commencement Date and expires on the Expiration Date specified in the Basic License Information ("**Term**") unless sooner terminated pursuant to the terms of this License; provided, however, Licensee may assign its interest in this License to an assignee of Licensee's interest in the VDDA so long as such assignee assumes all of Licensee's obligations under this License. [**Note: the 20th Street Plaza License Area will be licensed on an exclusive basis.**]

The Parties acknowledge that Licensee is undertaking the Permitted Activities hereunder to fulfill its obligations under the VDDA. Therefore, Port will not revoke or terminate this License prior to the Expiration Date unless Licensee causes an uncured event of default hereunder or under the VDDA that would otherwise permit a termination thereof.

Initials: _____
Licensee

4. FEES.

4.1. ***License Fee***. [As described in the Basic License Information, no License Fee is due hereunder so long as Licensee uses the License Area for Permitted Activities only.] Any other sums payable by Licensee to Port hereunder shall be paid in cash or by good check to the Port and delivered to Port's address specified in the Basic License Information, or such other place as Port may designate in writing. All other sums payable by Licensee, including without limitation, any additional charges and late charges, are referred to collectively as "Fees." [**Note: Revise if License Area used for uses other than construction of the PKN Project or construction of the PKN Horizontal Improvements.**]

4.2. ***Additional Charges***. Without limiting Port's other rights and remedies set forth in this License, at Law or in equity, in the event Licensee fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 21.3 (Licensee's Environmental Condition Notice Requirements) of ***Schedule 1*** attached hereto (Provisions for Indemnity, Insurance and Hazardous Materials), or Sections 15.1 (SWPPP) or 21.1(d) (CMD Form) of this License, or to provide evidence of the required insurance coverage described in Section 11 below (Insurance), then upon written notice from Port of such failure, Licensee shall pay an additional charge in the amount of Three Hundred Dollars ($300). In the event Licensee fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Licensee additional written notice requesting such document, then Licensee shall pay to Port an additional charge in the amount of Three Hundred Fifty Dollars ($350) for each additional written notice Port delivers to Licensee requesting such document. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in

lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

4.3. ***Late Charges/Habitual Late Payer***. Licensee acknowledges that late payment by Licensee to Port of Fees or other sums due under this License will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Licensee fails to pay Fees on the date due, such failure shall be subject to a Late Charge at Port's discretion. Licensee shall also pay any costs including attorneys' fees incurred by Port by reason of Licensee's failure to timely pay Fees. Additionally, in the event Licensee is notified by Port that Licensee is considered to be a Habitual Late Payer, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Licensee's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Licensee.

4.4. ***Default Interest***. Any Fees, if not paid within five (5) business days following the due date and any other payment due under this License not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Licensee nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Licensee. Licensee shall also pay any costs, including attorneys' fees incurred by Port by reason of Licensee's failure to pay Fees or other amounts when due under this License.

4.5. ***Returned Checks***. If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5. ENVIRONMENTAL OVERSIGHT DEPOSIT.

(a) Before the Commencement Date, Licensee must deliver to Port the Environmental Oversight Deposit in cash, in the sum specified in the Summary of Basic Information, as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Licensee's operations under this License; provided, however, that the Environmental Oversight Deposit will not be deemed an advance of any payment due to Port under this License, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

(b) Port may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("Environmental Notice") to Licensee and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Licensee has not begun to cure or comply with the Environmental Notice or is not working actively to cure the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, attorneys' fees, and collection and laboratory analysis of environmental samples.

(c) If an Environmental Notice is delivered to Licensee, and Licensee has cured or complied with the Environmental Notice within fourteen (14) days after its delivery,

Port may apply a maximum of $500 from the Environmental Oversight Deposit for each Environmental Notice delivered to Licensee to reimburse Port for its administrative costs.

(d) Licensee must pay to Port immediately upon demand a sum equal to any portion of the Environmental Oversight Deposit Port expends or applies.

(e) Provided that no Environmental Notices are then outstanding, Port will return the balance of the Environmental Oversight Deposit, if any, to Licensee within a reasonable time after the expiration or earlier termination of this License. Port's obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.

6. PERMITTED ACTIVITY; SUITABILITY OF LICENSE AREA.

The License Area shall be used and occupied only for the Permitted Activity specified in the Basic License Information and for no other purpose without the express prior written permission from Port. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by Port. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By entering onto the License Area under this License, Licensee acknowledges it shall be deemed to have inspected the License Area and accepted the License Area in its "**As Is**" condition and as being suitable for the conduct of Licensee's activity thereon.

7. PROHIBITED USES.

Licensee shall use the License Area solely for Permitted Activities and for no other purpose. Any other use in or on or around the License Area shall be strictly prohibited, including, but not limited to, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) (each, a "**Prohibited Use**").

In the event Port determines after inspection of the License Area that a Prohibited Use or Prohibited Uses are occurring in, on or around the License Area, then Licensee shall immediately cease the Prohibited Use(s) and shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of written notice to Licensee to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) of the License Area that Licensee has not ceased the Prohibited Use, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Cease Prohibited Use delivered to Licensee. The parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area and Licensee's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 7 and the reasonableness of the amount of the charges described in this Section 7.

8. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.

8.1. ***Compliance with Laws***. Licensee, at Licensee's sole cost and expense, shall comply with all Laws relating to or affecting Licensee's use or occupancy of the License Area.

8.2. ***Regulatory Approval***. Licensee understands that Licensee's activity on the License Area may require Regulatory Approvals from Regulatory Agencies. Licensee shall be solely responsible for obtaining any such Regulatory Approvals, and Licensee shall not seek any Regulatory Approval without first obtaining the prior written approval of Port, not to be unreasonably withheld, subject to this Section 8.2. Port will cooperate reasonably with Licensee in Licensee's efforts to obtain required Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with applicable Laws and to further terms and conditions of this License, including without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (i) encumber, restrict or adversely change the use of any Port property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions; or (ii) subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees to which Port may be subject). All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by the Port or would create obligations on the part of the Port (whether on or off of the License Area) to perform or observe, unless in each instance the Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for the fines and penalties. To the fullest extent permitted by Law, Licensee agrees to Indemnify City, Port and their Agents from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

8.3. ***Port Acting As Owner of Property***. By signing this License, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a Regulatory Agency of City with certain police powers], and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activity on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

8.4. ***Accessibility***. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections

performed. Licensee is hereby advised that the License Area has not been inspected by a CASp and, except to the extent expressly set forth in this License, Port shall have no liability or responsibility to make any repairs or modifications to the License Area in order to comply with accessibility standards. The following disclosure is required by law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Licensee understands and agrees that Licensee may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws. As further set forth in this Section, Licensee further understands and agrees that it is Licensee's obligation, at no cost to Port, to cause Licensee's use of the License Area to be conducted in compliance with the all federal or state disability access Laws.

9. UTILITIES, SERVICES, MAINTENANCE AND REPAIR.

9.1. ***Utilities***. Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the License Area except that the foregoing will not diminish any Port obligation under the VDDA, if any, to work cooperatively with Licensee with respect to any Licensee right to access utilities. Except as may be otherwise provided in the Basic License Information, Licensee shall make arrangements and shall pay all charges for all Utilities (without limiting any right to reimbursement of Vertical Developer under specified conditions as set forth in the Financing Plan (as defined in the VDDA)) to be furnished on, in or to the License Area or to be used by Licensee. Licensee will procure all electricity for the License Area from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission determines that it cannot feasibly provide service to Licensee, Licensee may seek another provider.

9.2. ***Services***. Port has no responsibility or liability of any kind with respect to the provision of any services to Licensee or on, in, or to the License Area. Licensee shall make arrangements and shall pay all charges for all services (without limiting any right to reimbursement of Vertical Developer under specified conditions as set forth in the Financing Plan) to be furnished on, in or to the License Area or to be used by Licensee, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

9.3. ***Maintenance and Repairs***. Licensee shall not be obligated to make any repairs, replacement or renewals of any kind, nature of description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon (collectively, "**Repairs**"), except to the extent that Licensee, or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. In the event that Licensee or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property that is not otherwise consistent with the PKN Project, Licensee shall be responsible and Port may, at its sole and absolute discretion, elect to repair the same itself (after notice to Licensee and Licensee fails to

promptly and diligently pursue completion of the repair) or require Licensee to repair the same, all at Licensee's sole cost and expense. Upon receipt of any invoice from Port for costs incurred by Port related to any repair performed by Port in accordance with this Section, Licensee shall immediately reimburse Port therefor. This provision shall survive the expiration or earlier termination of this License.

10. TAXES AND ASSESSMENTS.

Without limiting any right to reimbursement of Vertical Developer under the Financing Plan, Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the Licensee's possession, use, or occupancy, as distinguished from the ownership, of the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee shall report any assignment or other transfer of any interest in this License or any renewal or extension hereof to the County Assessor within 60 days after such assignment transaction or renewal or extension. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License. [

11. INSURANCE.

Licensee shall maintain or cause to be maintained throughout the Term, at Licensee's expense (or its Agents' or Invitees' expense), insurance in accordance with the insurance provisions set forth in Article 20 (Insurance) as shown on ***Schedule 1*** (Provisions for Indemnity, Insurance and Hazardous Materials).

12. NOTICES.

Except as otherwise expressly provided in this License or by Law, all notices (including notice of consent or non-consent) required or permitted by this License or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic License Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by Licensee in Licensee's written response to Port's written request for such information.

All notices under this License shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

13. DEFAULT BY LICENSEE; REMEDIES.

13.1. ***Event of Default***. The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee; or

(b) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee.

(c) An assignment, or attempted assignment, of this License by Licensee, except in connection with an assignment or other Transfer of Licensee's rights permitted or approved by Port under the VDDA;

(d) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against if not resolved within ninety (90) days thereafter, Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License which is not resolved within ninety (90) days thereafter.

13.2. ***Port's Remedies***. Upon default by Licensee, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee's obligations.

14. INDEMNITY AND EXCULPATION.

The provisions of Article 19 (Indemnification of Port) in ***Schedule 1*** (Provisions for Indemnity, Insurance and Hazardous Materials) will govern Licensee's Indemnification obligations and Licensee's waiver of various claims against the Indemnified Parties.

15. HAZARDOUS MATERIALS.

The provisions of Article 21 (Hazardous Materials) set forth in ***Schedule 1*** (Provisions for Indemnity, Insurance and Hazardous Materials) will govern.

15.1. *Storm Water Pollution Prevention.*

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. If applicable to the Permitted Activities hereunder, Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning operations in the License Area.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

15.2. ***Presence of Hazardous Materials***. California Law requires landlords to disclose to Licensees the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials (as herein defined) may be present on or near the License Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally occurring

radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: Hazardous Materials described in the reports listed in ***Schedule 2*** attached hereto, copies of which have been delivered to or made available to Licensee. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Licensee must disclose the information contained in this Section to any sublicensee, licensee, transferee, or assignee of Licensee's interest in this License. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations. [**Note: Schedule 2 is the same as the Port Disclosure Matters exhibit to the VDDA**]

16. PORT'S ENTRY ON LICENSE AREA.

16.1. ***Entry for Inspection***. Port and its authorized Agents shall have the right to enter the License Area upon reasonable prior notice and during normal business hours for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties; provided, however, Port shall be required to adhere to Licensee's reasonable construction guidelines, as applicable, when entering the License Area.

16.2. ***Emergency Entry***. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License.

16.3. ***No Liability***. Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area, or entry by the public (as Licensee has a non-exclusive right to use the License Area) onto the License Area.

17. IMPROVEMENTS AND ALTERATIONS.

Except as specified in the Basic License Information to the extent required to implement Licensee's obligations to construct the PKN Horizontal Improvements, Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area (including the installation of any trade fixtures affixed to the License Area or whose removal will cause injury to the License Area).

18. SURRENDER.

Upon the expiration or earlier termination of this License, Licensee shall surrender to Port the License Area and any pre-existing alterations and improvements in the same or better condition as it was in at the Commencement Date, subject to ordinary wear and tear). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by Licensee properly performing all of its obligations under this License. The License Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this License and any other encumbrances created or approved by Port. On or before the expiration or earlier termination hereof, Licensee shall remove all of its personal property and perform all restoration made necessary by the removal of Licensee's personal property.

With prior notice to Licensee, Port may elect to retain or dispose of Licensee's personal property and any alterations and improvements that Licensee has installed with or without Port's consent that Licensee does not remove from the License Area prior to the expiration or earlier

termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned property and repairing any damage to the License Area resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee. Licensee hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

19. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.

19.1. ***Litigation Expenses***. The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this License, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

19.2. ***City Attorney***. For purposes of this License, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

19.3. ***Limitation on Damages***. Port will not have any liability whatsoever for monetary damages, and in no event, will Port be liable for any actual, consequential, incidental or punitive damages, including, but not limited to, lost opportunities, lost profits or other damages of a consequential nature under this License. Licensee's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Licensee expressly waives all such liability.

19.4. ***Non-Liability of City Officials, Employees and Agents***. No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

19.5. ***Limitation on Port's Liability Upon Transfer***. In the event of any transfer of Port's interest in and to the License Area, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or

obligations contained in this License thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

20. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Fees or otherwise relieve Licensee from any of its obligations under this License.

21. CITY AND PORT REQUIREMENTS. [NOTE: PROVISIONS OF THIS SECTION 21 WILL BE UPDATED TO INCLUDE CITY PROVISIONS REQUIRED AS OF LICENSE EXECUTION]

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this License relating to any such code provision shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance.

21.1. ***Nondiscrimination***.

(a) Covenant Not to Discriminate. In the performance of this License, Licensee covenants and agrees not to discriminate 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 or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapters 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapters 12B or 12C of the Administrative Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) Sublicenses and Other Contracts. Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all Sublicensees and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local

Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Licensee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of $50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

21.2. ***Resource-Efficient Facilities and Green Building Requirements***. Licensee agrees to comply with all applicable provisions of Environment Code Chapter 7 relating to resource-efficiency and green building design requirements.

21.3. ***Prohibition of Tobacco Sales and Advertising***. Licensee acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

21.4. ***Prohibition of Alcoholic Beverages Advertising***. Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

21.5. ***Graffiti Removal***. Licensee agrees to remove all graffiti from the License Area, within forty-eight (48) hours of the earlier of Licensee's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "**Graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this License or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

21.6. ***Restrictions on the Use of Pesticides***. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control

services to the License Area, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee's staff or contractors. If Licensee or Licensee's contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

21.7. ***MacBride Principles Northern Ireland***. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

21.8. ***Tropical Hardwood and Virgin Redwood Ban***. Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

21.9. ***Preservative-Treated Wood Containing Arsenic***. Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

21.10. ***Notification of Limitations on Contributions***. If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this

Section 21.10 shall apply. Through its execution of this License, Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensee acknowledges that the foregoing restriction 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. Licensee further acknowledges that, if applicable, the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that if this Section 21.10 applies, Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

21.11. ***Sunshine Ordinance***. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

21.12. ***Conflicts of Interest***. Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

21.13. ***Drug-Free Workplace***. Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

21.14. ***Public Transit Information***. Licensee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Licensee employed on the License Area, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the License Area and encouraging use of such facilities, all at Licensee's sole expense.

21.15. ***Food Service and Packaging Waste Reduction Ordinance***. Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Licensee agrees that the sum of one hundred dollars ($100.00) liquidated damages for the first breach, two hundred dollars ($200.00)

liquidated damages for the second breach in the same year, and five hundred dollars ($500.00) liquidated damages for-subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

21.16. ***San Francisco Bottled Water Ordinance***. Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the License Area with attendance of more than 100 people.

22. WAIVER OF RELOCATION.

Licensee hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, to the extent allowed under applicable Law.

23. SIGNS.

Licensee shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices on the License Area without Port's prior written consent. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Licensee shall obtain all Regulatory Approvals required by such Laws. Licensee, at its sole cost and expense, shall remove all signs placed by it on the License Area at the expiration or earlier termination of this License.

24. MISCELLANEOUS PROVISIONS.

24.1. ***California Law***. This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and Licensee hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

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

24.3. ***Amendments***. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

24.4. ***Severability***. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by law.

24.5. ***Interpretation of License***.

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this License.

(g) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

24.6. ***Successors***. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

24.7. ***Real Estate Broker's Fees***. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

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

24.9. ***Authority***. Licensee does hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee has and is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

24.10. ***No Implied Waiver***. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

24.11. ***Time is of Essence***. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

24.12. ***Cumulative Remedies***. All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

24.13. ***Survival of Indemnities***. Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

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

24.15. ***No Recording***. Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

24.16. ***Additional Written Agreement Required***. Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

25. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"**28-Acre Site**" means the approximately 28-acres of land in the southeast corner of Pier 70 that is subject to that certain Disposition and Development Agreement and that certain Master Lease, all between Port and FC Pier 70, LLC.

"**Agents**" when used with reference to either party to this License or any other person, means the officers, directors, employees, agents, and contractors of the party or other person, and their respective successors, and assigns.

"**Basic License Information**" refers to the summary of basic license information attached to this License.

"**CMD**" means the Contract Monitoring Division of the City's General Services Agency.

"**Cal-OSHA**" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"**City**" is defined in Section 1.

"**Claim**" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"**Commencement Date**" means the date specified in the Basic License Information.

"**Cure Period**" means the period of time described in the Basic License Information.

"**Encroachment Area**" is defined in Section 2.2.

"**Encroachment Area Charge**" is defined in Section 2.2.

"**Environmental Laws**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Environmental Regulatory Action**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Environmental Regulatory Agency**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Environmental Regulatory Approval**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Exacerbate**" or "**Exacerbating**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Expiration Date**" means the date specified in the Basic License Information.

"**Fees**" means all sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 4.

"**Handle**" or "**Handling**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material Claim**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material Condition**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Indemnified Parties**" the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, the City, including its Port, and all of their respective successors and assigns, all other Person acting on their behalf, and each of them.

"**Indemnify**" means to indemnify, protect, defend, and hold harmless. "**Indemnification**" and "**Indemnity**" have correlating meanings.

"**Interest Rate**" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"**Investigate**" or "**Investigation**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Invitees**" means Licensee's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, Sublicensees, and any other person whose rights arise through them.

"**Late Charge**" means a fee equivalent to fifty dollars ($50.00).

"**Law**" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area, including Regulatory Approvals issued to Port which require Licensee's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the parties.

"**License**" is defined in Section 1.

"**License Area**" means the area described in the Basic License Information.

"**License Fee**" means the monthly usage charge for the License Area described in the Basic License Information.

"**Losses**" means, when used in reference to a Claim, any actual loss, liability, damages, compensation, contribution, cost recovery, lien, obligation, interest, injury, penalty, fine, action, judgment, award, or costs (including reasonable Attorneys' Fees and Costs), or reasonable costs to satisfy a final judgment of any kind, known or unknown, contingent or otherwise, except to the extent specified in this License.

"**Notice to Cease Prohibited Use**" is defined in Section 7.

"**Notice to Vacate**" is defined in Section 2.2.

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**Permitted Activity**" is means the activity described in the Basic License Information.

"**Pier 70 Risk Management Plan**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**PKN Horizontal Improvements**" is defined in the VDDA.

"**PKN Project**" means the Vertical Project and the PKN Horizontal Improvements.

"**Pre-Existing Hazardous Material"** is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Port**" is defined in Section 1.

"**prevailing party**" is defined in Section 19.1.

"**Prohibited Use**" is defined in Section 7.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"**Release**" is defined in Section 21.6 of ***Schedule 1*** attached hereto. .

"**Remediate**" or "**Remediation**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**State Lands Indemnified Parties**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**SWPPP**" is defined in Section 15.1.

"**Term**" is defined in Section 3.

"**VDDA**" means the Vertical Disposition and Development Agreement dated as of _____, 20[xx] between the City and County of San Francisco operating by and through the San Francisco Port Commission and [Vertical Developer].

"**Vertical Project**" means that certain development project undertaken by Licensee as more particularly described in the VDDA.

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IN WITNESS WHEREOF, Port and Licensee have executed this License as of the last date set forth below

Licensee: **[INSERT VERTICAL DEVELOPER],** a
[_____]

By: _____
Name: _____
Title: _____

Date signed: _____

By: _____
Name: _____
Title: _____

Date signed: _____

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

By: _____
Michael J. Martin,
Deputy Director, Real Estate and Development

Date signed: _____

Approved as to Form: DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

License Prepared by [INSERT NAME] , Commercial Property Manager_____(initial)

EXHIBIT A

LICENSE AREA

(To be attached.)

EXHIBIT B

PERMITTED ACTIVITY
(To be attached.)

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SCHEDULE 1

PROVISIONS FOR INDEMNITY, INSURANCE AND HAZARDOUS MATERIALS

19. INDEMNIFICATION OF PORT.

19.1. General Indemnification of the Indemnified Parties. Subject to Section 19.4, (Exclusions from Indemnifications, Waivers and Releases), Licensee must Indemnify the Indemnified Parties against any and all Losses incurred by an Indemnified Party first arising from and after the License Date directly or indirectly from:

(1) Licensee's failure to obtain any Regulatory Approval related to the Permitted Activity;

(2) any personal injury or property damage occurring on any portion of the License Area during the term of this License or while under Licensee's control;

(3) any Licensee's acts or omissions in relation to construction, management, or operations at the License Area including patent and latent defects and mechanic's or other liens to secure payment for labor, service, equipment, or material;

(4) In addition, to the foregoing, Licensee will Indemnify the Indemnified Parties from and against all Losses (if an Indemnified Party has been named in any action or other legal proceeding) incurred by an Indemnified Party arising directly or indirectly out of or connected with contracts or agreements (i) to which no Indemnified Party is a party, (ii) entered into by Licensee in connection with its performance under this License, except to the extent such Losses were caused by the gross negligence or willful misconduct of an Indemnified Party. For purposes of the foregoing sentence, no Indemnified Party will be deemed to be a "party" to a contract solely by virtue of having approved the contract under this License (e.g., an Assignment and Assumption Agreement).

19.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under Section 19.1 (General Indemnification of the Indemnified Parties) and subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), Licensee, for itself and on behalf of its sub-licensees, Agents, or Invitees, renters or condo owners of the Vertical Project or any of their respective Invitees (individually "Related Third Party" and collectively "Related Third Parties") or their respective Invitees agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition existing or occurring during the Term;

(ii) any Handling or Release of Hazardous Materials in, on, under, or around the License Area during the Term;

(iii) without limiting Licensee's Indemnification obligations in this Section 19.2(a), any Handling or Release of Hazardous Materials by Licensee or its Agents in, on, under, or around the License Area to perform the PKN Horizontal Improvements at any time prior to acceptance of such PKN Horizontal Improvements; or

(iv) without limiting Licensee's Indemnification obligations in Section 19.2(a)(ii) or 19.2(a)(iii), any Handling or Release of Hazardous Materials by Licensee or its Agents outside of the License Area, but in, on, under, or around other Port property, or City property that is adjacent to the License Area but only if such Losses or Hazardous Material Claims arise directly or indirectly out of Licensee's or its Agents' acts, omissions or negligence ; or

(v) any Exacerbation of any Hazardous Material Condition; or

(vi) failure by Licensee or any Related Third Party to comply with the Pier 70 Risk Management Plan, or failure by their respective Invitees to comply with the Pier 70 Risk Management Plan within the License Area during the Term; or

(vii) claims by Licensee or any Related Third Party for exposure during the Term from and after the Commencement Date to Hazardous Materials in, on, under, or around the License Area.

Without limiting Licensee's Indemnity obligations with respect to the License Area, Port agrees that Licensee's Indemnity for Claims relating to "other Port property" or "other City property" as set forth above in Subsection 19.1(a)(iv) applies only if such Claims arise directly or indirectly out of Licensee's, Related Third Party's, or Invitee's acts, omissions or negligence.

(b) "**Losses**" under Section 19.2(a) includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for the loss or restriction on use of rentable or usable space; (iii) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (iv) actual natural resource damages; and (v) Attorneys' Fees and Costs. If Port actually incurs any Losses, Licensee must reimburse Port for Port's Losses, plus interest at the Interest Rate from the date Port delivers a payment demand and reasonable supporting evidence of such Loss to Licensee until paid; such reimbursement will be made within fifteen (15) business days after receipt of Port's payment demand and reasonable supporting evidence.

(c) Licensee understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this Section 19.2, subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), arises upon the earlier to occur of:

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, or around the License Area;

(ii) the Handling or Release of Hazardous Materials in, on, under, or around the License Area;

(iii) the Exacerbation of any Hazardous Material Condition in, on, under, or around the License Area during the Term; or

(iv) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of Losses.

19.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in Section 19.4 (Exclusions from Indemnifications; Waivers and Releases), Licensee's Indemnification obligations under this License are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Licensee specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Licensee, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Licensee and continues at all times thereafter until finally resolved. Licensee's Indemnification obligations under this License are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Licensee may have to Port in this License, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Licensee constitute Additional Rent owing from Licensee to Port hereunder and are due and payable from time to time immediately upon Port's request, as incurred.

19.4. Exclusions from Indemnifications; Waivers and Releases.

(a) Nothing in this Article 19 (Indemnification of Port) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in Sections 19.1 (General Indemnification of Indemnified Parties), 19.2 (Hazardous Materials Indemnification),), or the defense obligations set forth in Sections 19.3 (Scope of Indemnities) and 19.6 (Defense) extend to Losses:

(i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, or

(ii) from third parties' claims for exposure to Hazardous Materials from the License Area prior to the Commencement Date; or

(iii) without limiting Licensee's Indemnification obligations under Sections 19.2(a)(iii), 19.2(a)(iv), 19.2(a)(vi), or 19.2(a)(vii), and to the extent the applicable Loss was not caused by the failure of Licensee or a Related Third Party to comply with the Pier 70 Risk Management Plan, or the failure of their respective Invitees to comply with the Pier 70 Risk Management Plan while on the License Area, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the License Area after the PKN Horizontal Improvements have been accepted by Port or if applicable, the City; provided, however, the foregoing limitation on Licensee's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Licensee or any of its Related Third Parties.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under Section 19.2 (Hazardous Materials Indemnification) is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Licensee in asserting a claim or claims under such insurance policy but without waiving any of its rights under Section 19.2 (Hazardous Materials Indemnification).

19.5. Survival. Licensee's Indemnification obligations under this License and the provisions of this Article 19 (Indemnification of Port) will survive the expiration or earlier termination of this License, provided, however, that License (a) shall not have any liability or indemnification obligations hereunder with respect to the PKN Horizontal Improvements or the Port Acceptance Items to the extent that such liability arises out of or in connection with any acts, events, circumstances or matters first occurring after the date of Port's acceptance of the PKN Horizontal Improvements and all Port Acceptance Items, and (b) shall not have any liability or indemnification obligations hereunder to the extent that such liability arises out of or in connection with any acts, events, circumstances or matters first occurring or first arising after the date any third party actually acquires ownership of the Property pursuant to an Assignment and Assumption Agreement..

19.6. Defense. Licensee will, at its option but subject to reasonable approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Licensee's choice; provided, that in all cases Port will be entitled to participate in such defense, compromise or settlement at its own expense. If Licensee fails, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port will have the right promptly to use the City Attorney or hire outside counsel, at Licensee's sole cost, to carry out such defense, compromise or settlement which expense is due and payable to the Port within fifteen (15) days after receipt by Licensee of a detailed invoice for such expense.

19.7. Waiver. As a material part of the consideration of this License, Licensee hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from any Losses, including (i) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (ii) goodwill, (iii) business opportunities, (iv) any act or omission of persons occupying adjoining premises, (v) theft, (vi) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination, (vii) Building defects, (viii) inability to use all or any portion of the License Area due to sea level rise or flooding or seismic events, (ix) arising from the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard, and (x) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the License Area, the Property (as defined in the VDDA), or the 28-Acre Site, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

Licensee expressly acknowledges and agrees that the amount payable by Licensee hereunder does not take into account any potential liability of the Indemnified Parties or State Lands Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this License in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties or State Lands Indemnified Parties, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers or releases contained in this License and as a material part of the consideration of this License, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties or State Lands Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue, or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties or State Lands Indemnified Parties arising out of this License or the uses authorized hereunder, including, any interference with uses conducted by Licensee pursuant to this License regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Licensee understands and expressly accepts and assumes the risk that any facts concerning the claims released in this License might be found later to be other than or different from the facts now believed to be true, and agrees that the waivers and releases in this License will remain effective. Therefore, with respect to the claims released in this License, Licensee waives any rights or benefits provided by California Civil Code Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. BY PLACING ITS INITIALS BELOW, LICENSEE SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE WAIVERS AND RELEASES MADE ABOVE AND THE FACT THAT LICENSEE WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE WAIVERS AND RELEASES AT THE TIME THIS LICENSE WAS MADE, OR THAT LICENSEE HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Licensee's Initials: _____

Licensee acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Licensee realizes and acknowledges that it has agreed upon this License in light of this realization and, being fully aware of this situation, it

nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

20. INSURANCE.

20.1. Required Insurance Coverage. Licensee, at its sole cost and expense, shall maintain, or cause its Invitees or Agents to maintain at their sole cost and expense, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than Ten Million Dollars ($10,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, and explosion, collapse and underground (XCU) coverage during any period in which Licensee is constructing any improvements to the License Area with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than Two Million Dollars ($2,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Licensee's activity on the License Area. If parking is permitted under this License, Licensee must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the License Area on a regular basis, including without limitation Licensee's Agents and Invitees.

(c) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. If applicable, Worker's Compensation in statutory amounts, with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury, or illness. In the event Licensee is self-insured for the insurance required pursuant to this Section 20.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. In addition, if applicable, Licensee will be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act in statutory amounts, respectively as applicable with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) Personal Property Insurance. Licensee, at its sole cost and expense, shall procure and maintain on all of its personal property and improvements, in, on, or about the License Area, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Licensee for the replacement of Licensee's personal property or contractors' equipment as applicable.

(e) Flood Insurance.

(i) During construction of the improvements, for any parcel located within a flood zone on the City's flood maps, flood insurance will be obtained with a deductible not to exceed ten percent (10%) of the total insurable value of the improvements except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates.

(ii) During construction of the improvements, for any parcel not located within a flood zone on the City's flood maps, flood insurance will be in an amount to the extent available at commercially reasonable rates from recognized insurance carriers or through the NFIP equal to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that

flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates

(f) Pollution Legal Liability. Licensee, at its sole cost and expense, will procure Pollution Legal Liability insurance with limits of not less than Three Million Dollars ($3,000,000.00) per claim, for a period of not less than five (5) years, and a subsequent policy for an additional five (5) years, for a total term of ten (10) years. Port and the City will be listed as named insureds under the terms of any such policy. If Licensee procures any such policy for a period that is longer than five (5) years, Licensee will ensure that each of THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE STATE LANDS INDEMNIFIED PARTIES are listed as named insureds for such longer period of time.

(g) Construction Activities. Insurance required in connection with construction of PKN Project is as set forth below:

(i) Contractor Requirements. Licensee must require its General Contractor to maintain contractor's pollution liability insurance with limits of not less than Three Million Dollars ($3,000,000.00) per claim, provided that such requirements may also be satisfied by a wrap policy insuring both Licensee and General Contractor.

(ii) Builder's Risk Requirements. In addition, Licensee or General Contractor must carry "Builder's All Risk" insurance meeting the following requirements.

(1) The amount of coverage must be equal to the full replacement cost of any new improvements. The policy must provide coverage for recurring ''soft costs,'' such as design and engineering fees. The Builder's Risk insurance may have a deductible clause not to exceed $100,000.

(2) The Builder's Risk policy must identify the City and County of San Francisco and the San Francisco Port Commission as loss payees as their interests may appear, subordinate to any lender requirements.

(3) The Builder's Risk policy must include the following coverages: (A) all damages of loss to the work and to appurtenances, to materials and equipment to be incorporated into the project while the same are in transit, stored on or off the site, to construction plant and temporary structures; and (B) the costs of debris removal, including demolition as may be made reasonably necessary by covered perils, resulting damage, and any applicable law.

(iii) Professional Services Requirements. Licensee must require all providers of engineering and geotechnical professional services under contract with Licensee to provide professional liability coverage with limits not less than Two Million Dollars ($2,000,000.00) each claim. Such insurance will provide coverage during the period when such professional services are performed and for a period of 3 years after issuance of a Certificate of Occupancy for the (second phase of the) Vertical Project. This requirement may be met by the use of an extended reporting period. Notwithstanding anything to the contrary, the coverage required in this clause (iii) may be provided with a lower limit for subcontractors that are local business enterprises (LBEs) or are performing work under subcontracts of $100,000 or less only. Licensee shall have the right to request a waiver of the requirements of this clause (iii) by delivering written request to Port, and Port shall respond within a reasonable period of time to any such request; provided, with respect to waiver requests for LBEs and subcontracts only, so long as the waiver request was sent by electronic mail, addressed to one or more line staff responsible for administration of this License stating in the subject line "Immediate Action Required to Avoid Deemed Consent" or words to the same effect, Port will be deemed to have approved such waiver if Port does not respond to the waiver request within five (5) business days.

(h) Other Coverage. Such other insurance or different coverage amounts may change from time to time as required by the City's Risk Manager, if in the reasonable judgement of the City's Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the License Area, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Licensee determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Licensee will provide to Port evidence supporting Licensee's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(i) Substitution. Notwithstanding the foregoing, Licensee shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in this Article 20 (Insurance) with insurance coverage maintained by one or more of Licensee's Agents, Invitees or transferees as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of this Article 20 as determined by Port.

20.2. General Requirements.

(a) Insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance required hereunder, such insurance shall name the Licensee as the first named insured. As to liability insurance Licensee shall ensure that Port and the City of San Francisco are named as additional insureds under all general liability and automobile liability coverages. Any umbrella and/or excess liability insurance will also include the City and Port as additional insureds, which may be satisfied by including an endorsement through a blanket additional endorsement or equivalent naming as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) As to Commercial General Liability and automobile liability insurance, shall provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought;

(iv) Will provide for waivers of any right of subrogation that the insurer of such party may acquire against the City or Port each party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 20.1(a) (General Liability Insurance), and 20.1(b) (Automobile Liability Insurance);

(v) Will be subject to the reasonable approval of Port, which approval shall not be unreasonably withheld.

(b) Certificates of Insurance; Right of Port to Maintain Insurance. Licensee shall furnish Port certificates with respect to the policies required under this Section within thirty (30) days after the Commencement Date and, with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy, and, within sixty (60) days after Port's request, shall also provide Port with copies of each such policy, or shall otherwise make such policy available to Port for its review. If at any time Licensee fails to maintain the

insurance required pursuant to Section 20.1, (Required Insurance Coverage), or fails to deliver certificates as required pursuant to this Section, then, upon thirty (30) business days' written notice to Licensee, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Licensee shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(c) Insurance of Others. Unless otherwise specified in this agreement, Licensee will ensure that all contractors and sub-contractors performing work on the License Area and all operators and subtenants of any portion of the License Area carry adequate insurance coverages. Licensee shall require that such policies be endorsed to include the "CITY AND COUNTY OF SAN FRANCISCO AND THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES" as additional insureds under the terms of any such policy.

(d) Excess Coverage. All requirements may be satisfied by any combination of umbrella and excess liability policies (as well as including blanket policies).

20.3. Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 20.1(d) (Personal Property Insurance) to the extent that such loss is reimbursed by an insurer.

21. HAZARDOUS MATERIALS.

21.1. Compliance with Environmental Laws. Licensee will comply and cause its Agents, Invitees, and all Persons under any Sublease, to comply with all Environmental Laws, operations plans (if any), the Pier 70 Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the PKN Project. Without limiting the generality of the foregoing, Licensee covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials on, under or about the License Area, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable Laws and any reasonable conditions or limitations required by Port, (c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

21.2. Licensee Responsibility. Licensee agrees to protect its Agents and Invitees in its operations on the License Area from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the License Area:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the License Area except as permitted under Section 21.1 (Compliance with Environmental Laws);

(b) Will not cause or permit any Hazardous Material Condition; and

(c) Will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the License Area, and will not engage in or permit any

activity at the License Area, or in the operation of any vehicles used in connection with the License Area in violation of any Environmental Laws;

(d) Licensee will be the "Generator" of any waste, including hazardous waste , resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the License Area;

(e) Will comply with all provisions of the Pier 70 Risk Management Plan with respect to the License Area, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually and

(f) Will comply, and will cause all of its sub-licensees that are subject to an operations plan, to comply with the operations plan applicable to Licensee or such sub-licensee, if any.

21.3. Licensee's Environmental Condition Notification Requirements. The following requirements are in addition to the notification requirements specified in the (i) operations plan(s), if any, (ii) the Pier 70 Risk Management Plan, and (iii) Environmental Laws:

(a) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 21.1 (Compliance with Environmental Laws), Handled, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during the Term or Licensee's occupancy of the License Area, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Licensee's notice to Port by oral or other means, Licensee must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Licensee's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Licensee's receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during Licensee's occupancy of the License Area that Licensee or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during the Term or Licensee's occupancy of the License Area;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use in, on, under or about the License Area during the Term or Licensee's occupancy of the License Area; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the

termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

(c) Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Port will be entitled to participate in any such meetings at its sole election.

(d) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Licensee's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the License Area. Licensee must provide Port with copies of any of the documents within the scope of this Section 21.3(d) upon Port's request.

(e) Licensee must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area. At Licensee's request, in lieu of providing Port with copies of non-privileged communications with other persons that are not Environmental Regulatory Agencies, Licensee will (1) make available for Port's review, such non-privileged communications at Licensee's San Francisco office or at Port's office, and (2) reimburse Port for additional costs related to Port's review of such non-privileged communications at Licensee's San Francisco office (including but not limited to additional time related to travel to and from Licensee's office).

(f) Port may from time to time request, and Licensee will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

21.4. Remediation Requirement.

(a) After notifying Port in accordance with Section 21.3 (Licensee's Environmental Condition Notification Requirements) and subject to Section 21.4(d), Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License, any Hazardous Material Condition occurring during the Term or while Licensee or its Agents or Invitees otherwise occupy any part of the License Area; provided Licensee must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with Section 21.3. Except as provided in the previous sentence, Licensee must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under Section 21.4(a), before this License terminates for any reason, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License: (i) any Hazardous Material Condition caused by Licensee's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Licensee's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for

Licensee's use of the License Area, or due to Subsequent Construction or construction of the PKN Project.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take actions that are reasonably necessary in Port's reasonable judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area.

(d) Unless Licensee or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, under, around or about the License Area, Licensee will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date or the date of Licensee's first use of the License Area, whichever is earlier.

21.5. Pesticide Prohibition. Licensee will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage as further described in Section 21.6 of the License (Restrictions on the Use of Pesticides).

21.6. Additional Definitions.

"**Environmental Laws**" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees, and all permits, licenses, approvals, or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the License Area, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety, or community right-to-know requirements related to the work being performed under this License. "Environmental Laws" include the IPM Ordinance, Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"**Environmental Regulatory Approval**" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

"**Exacerbate" or "Exacerbating**" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission, it being understood that the mere discovery of Hazardous Materials does not cause "Exacerbation". Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Licensee's operations, Investigations, maintenance, repair, construction of PKN Project under this License. "Exacerbate" also means failure to comply with the Pier 70 Risk Management Plan. "Exacerbation" has a correlative meaning.

"**Handle**" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "Handling" and "Handled" have correlative meanings.

"**Hazardous Material**" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted, or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. "Hazardous Materials" also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"**Hazardous Material Claim**" means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties, the State Lands Indemnified Parties, or the License Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or other Port property, the loss or restriction of the use or any amenity of the License Area or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"**Hazardous Material Condition**" means the Release or Exacerbation, or threatened Release or Exacerbation, of Hazardous Materials in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use in, on, under, or about the License Area during the Term or Licensee's occupancy of the License Area.

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the License Area, any Vertical Project or any portion of the site or the Vertical Project or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the License Area or any Vertical Project.

"**Pier 70 Risk Management Plan**" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"**Pre-Existing Hazardous Materials**" means any Hazardous Material existing on, in, about or around the License Area as of the Effective Date and identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"**Release**" means when used with respect to Hazardous Materials any accidental, actual, imminent or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"**Remediate**" or "**Remediation**" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the License Area or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"**State Lands Indemnified Parties**" means the State of California, the California State Lands Commission, and all of their respective heirs, legal representatives, successors and assigns, and all other Persons acting on their behalf.

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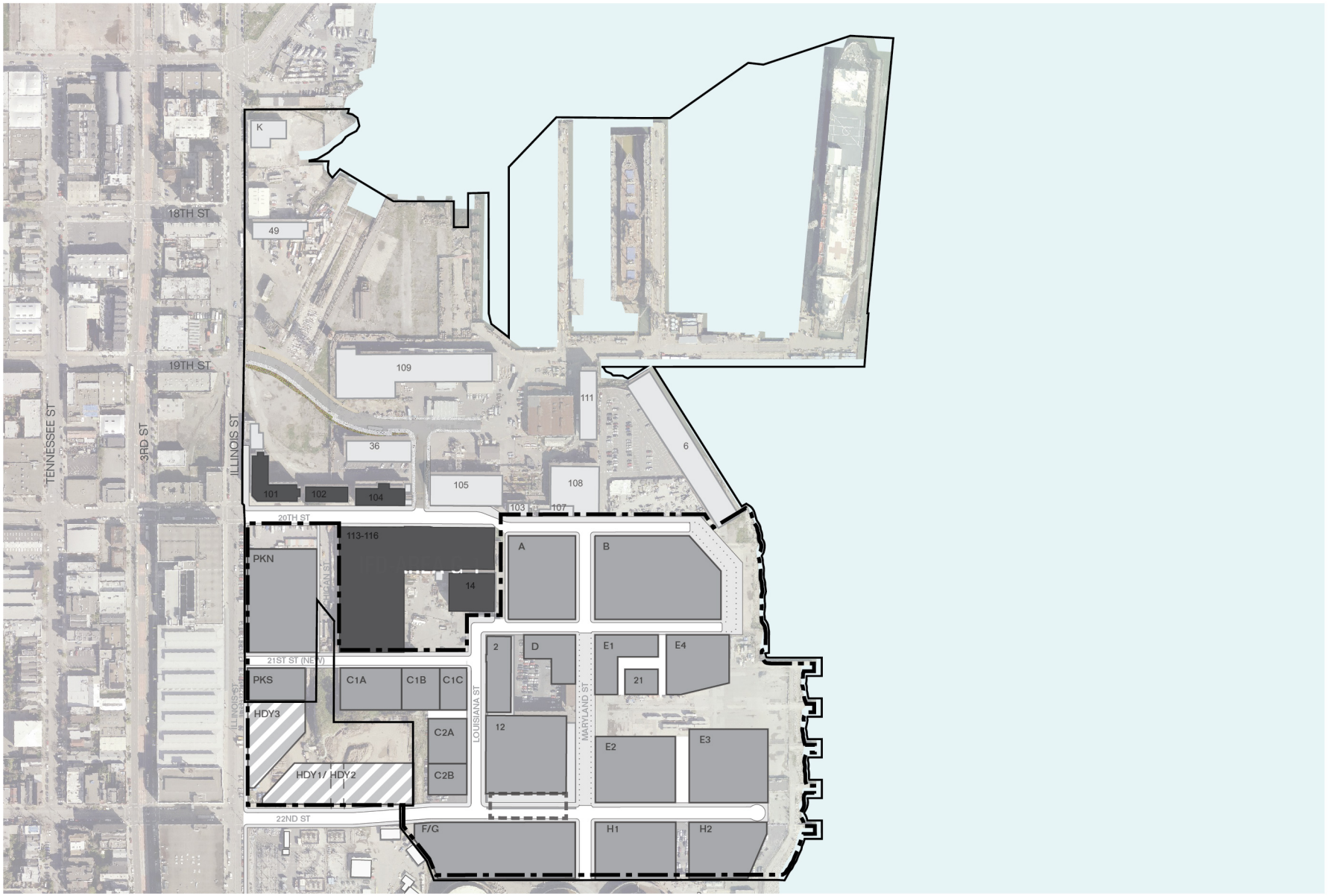
Schedule 3: Pier 70 SUD Public Financing Districts

MAP 1



PIER 70 SUD

IFD/IRFD BOUNDARY

SITELAB urban studio 05/01/18

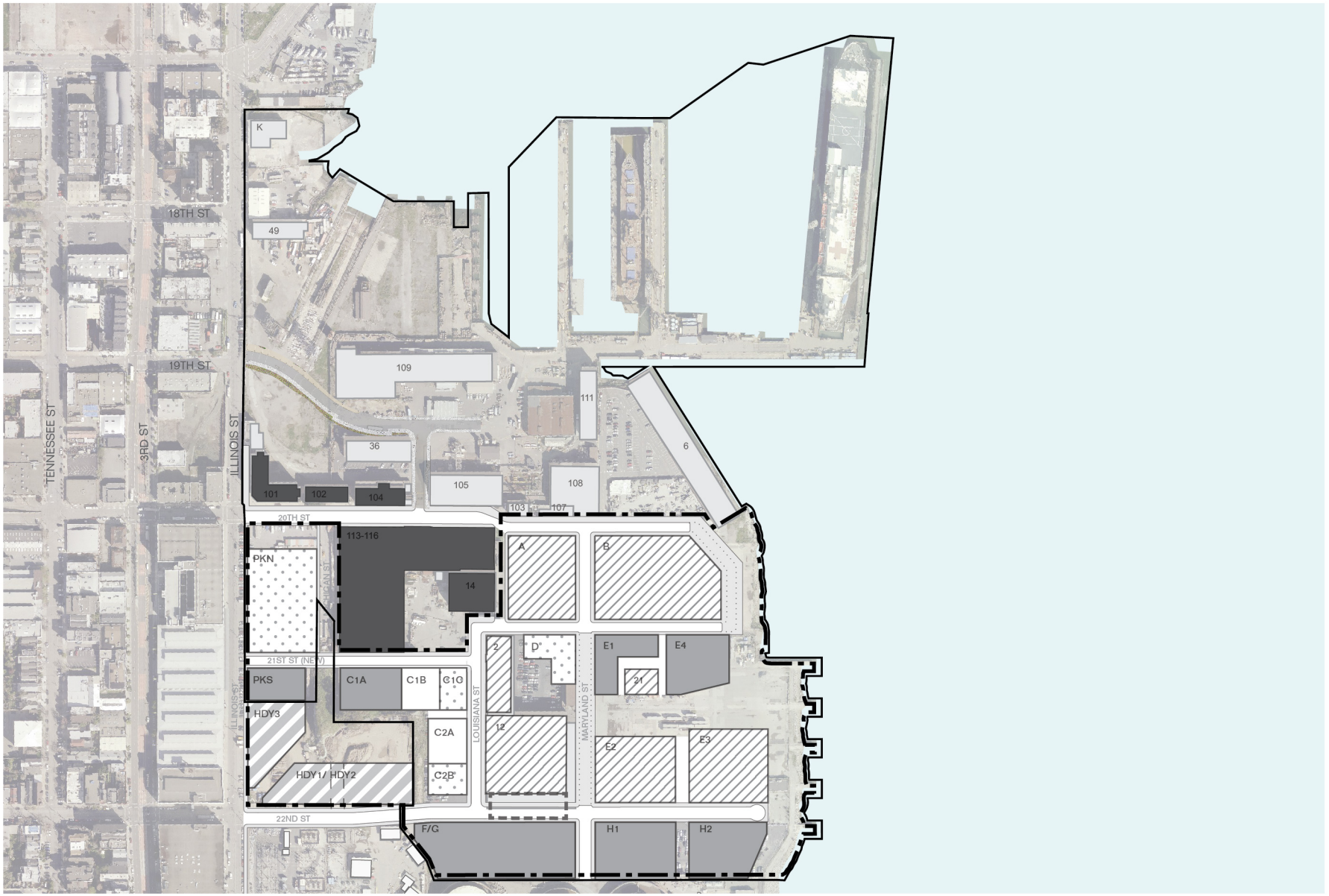
IFD/IRFD BOUNDARY

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD

- IFD Area G-1
- Hoedown Yard IRFD
- IFD Area G2-4

Schedule 3: Pier 70 SUD Public Financing Districts

MAP 2



PIER 70 SUD

CFD TAX AREAS

SITELAB urban studio 05/01/18

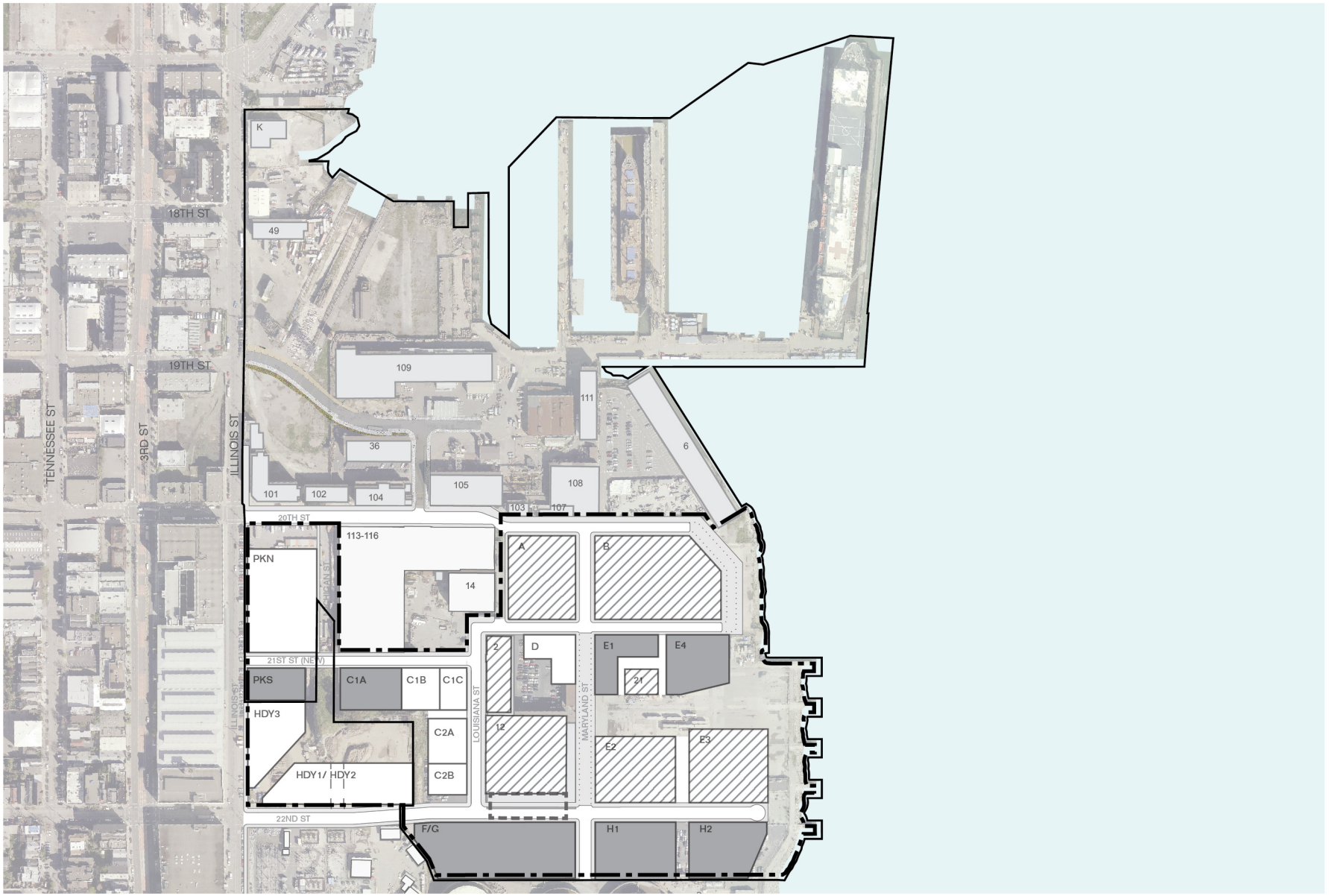
CFD TAX AREAS

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD

- Hoedown Yard CFD
- Pier 70 (Condo) CFD
- Future Annexation Area (Condo and/or Leased)
- Pier 70 (Leased Property) CFD
- 20th Street Historic Core CFD

Schedule 3: Pier 70 SUD Public Financing Districts

MAP 3



PIER 70 SUD

PIER 70 (LEASED PROPERTY) CFD

SITELAB urban studio 05/01/18

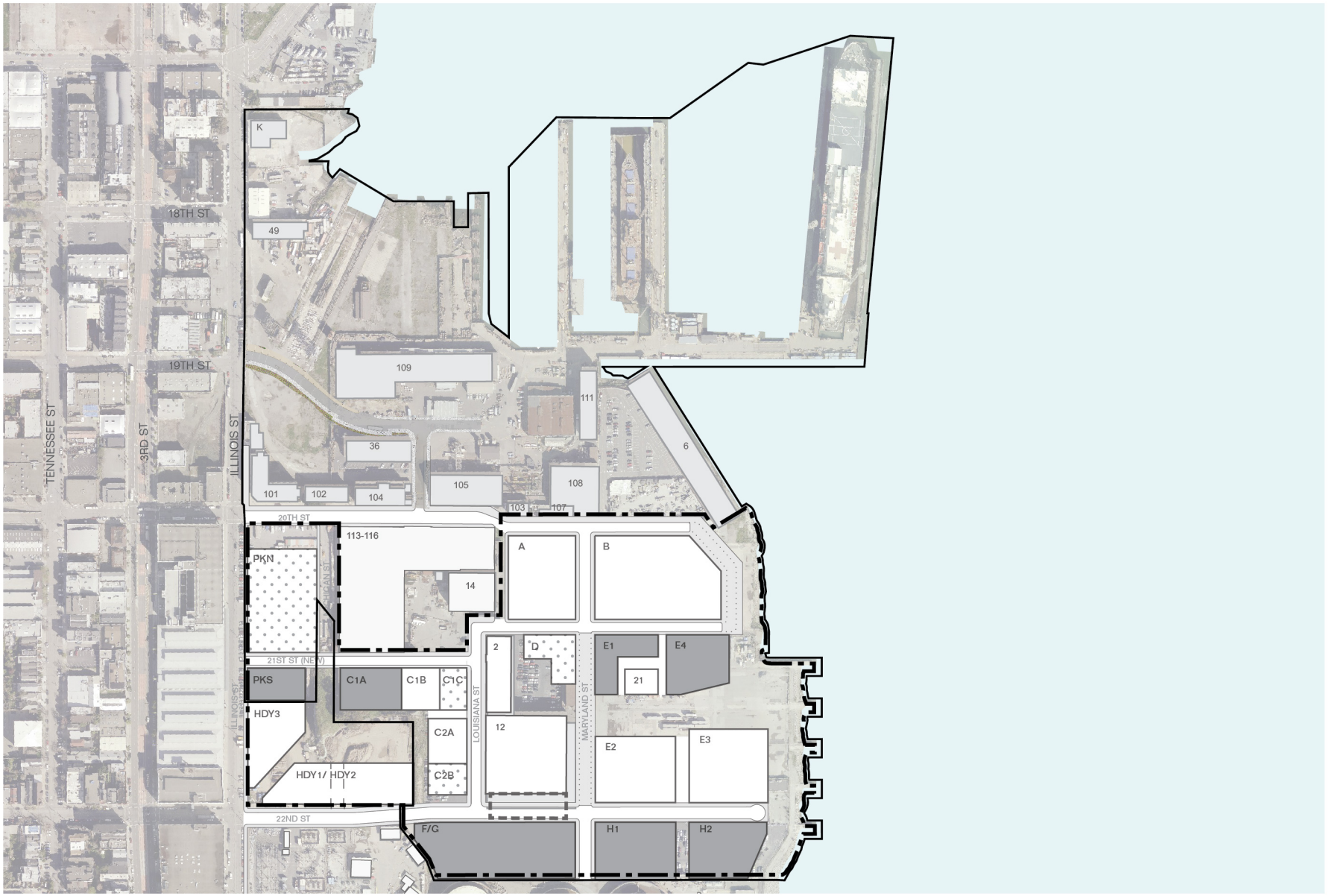
PIER 70 (NOI PROPERTY) CFD

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD

- PIER 70 (Leased Property) CFD
- Future Annexation Area (Condo and/or Leased)

Schedule 3: Pier 70 SUD Public Financing Districts

MAP 4



PIER 70 SUD

PIER 70 (CONDO) CFD

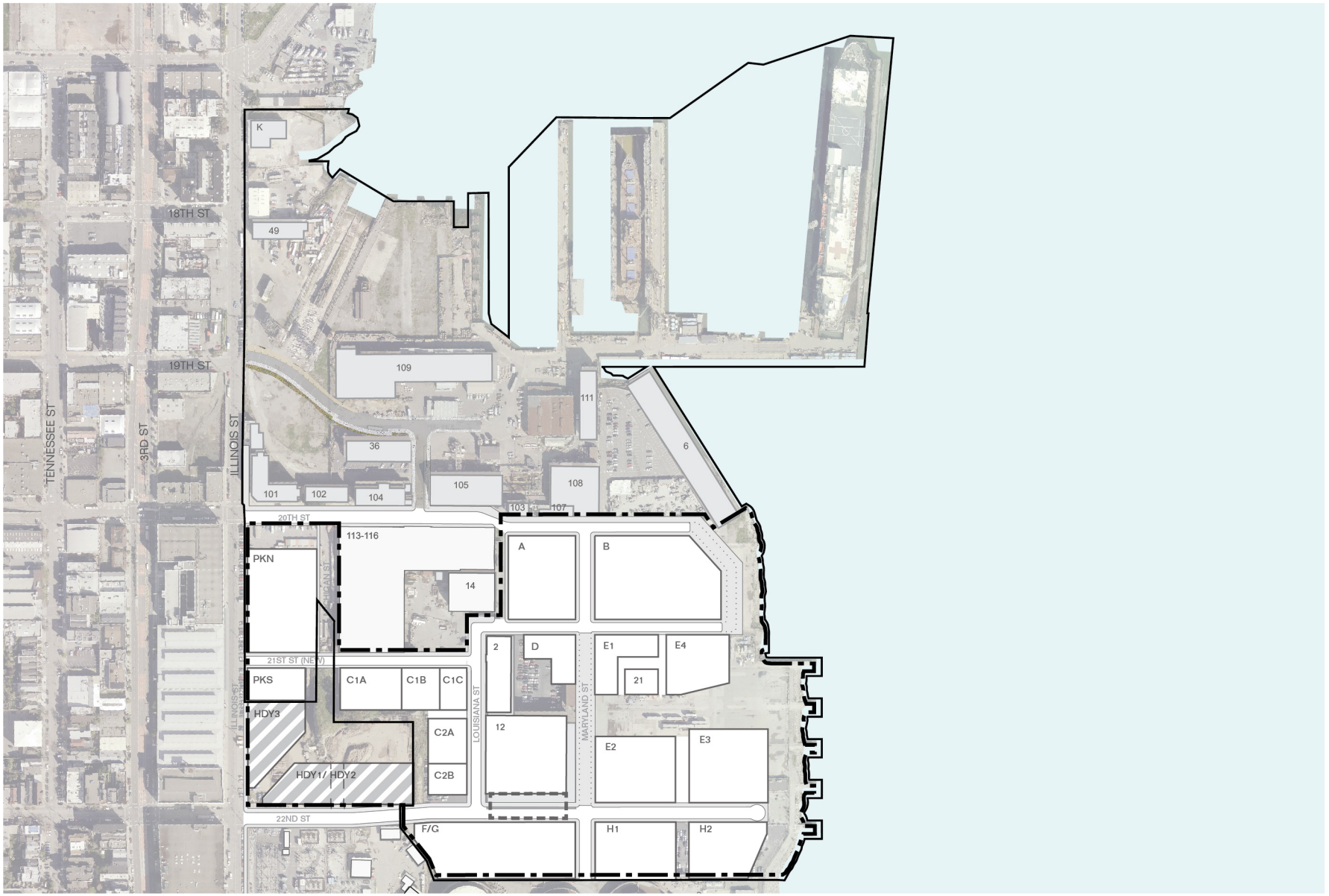
SITELAB urban studio 05/01/18

PIER 70 (CONDO) CFD

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD
- PIER 70 (Condo) CFD
- Future Annexation Area (Condo and/or Leased)

Schedule 3: Pier 70 SUD Public Financing Districts

MAP 5



PIER 70 SUD

HOEDOWN YARD CFD

SITELAB urban studio 05/01/18

HOEDOWN YARD CFD

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD
- Hoedown Yard CFD

SCHEDULE 2

OVERVIEW OF PROJECT PAYMENT SOURCES (OTHER THAN PORT CAPITAL)[1]

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
Parcel K North	Land Proceeds[3]	○ 20th/Illinois Plaza ○ FC Project Area Capital Costs[4] ○ Revenue-sharing[5]
28-Acre Site parcels	Land Proceeds[3]	○ FC Project Area Capital Costs[4] ○ Revenue-sharing[5]
Sub-Project Areas G-2, G-3, and G-4, IFD Project Area G (28-Acre Site, Parcel K North)	Project Tax Increment[6] (91.11%)	○ Special Debt Service ○ FC Project Area Capital Costs, except certain Public Benefit Costs and Excess Return under current law ○ Leased Property Backup Fund ○ PNLP Payments ○ Historic Building Feasibility Gap ○ Debt service on Bonds secured by Project Tax Increment ○ Pier 70 Shoreline Protection Facilities
	Port Tax Increment[7] (8.89%)	○ Irish Hill Park ○ Port Improvements ○ Special Debt Service for Historic Building Feasibility Gap solely on the conditions specified in **Financing Plan Article 11** (Historic Buildings) ○ Debt service on Bonds secured by Port Tax Increment
Pier 70 Leased Property CFD (28-Acre Site) ***Zone 1***: Phase 1 except Historic Bldg. 12 ***Zone 2***: All Later Phase NOI Property except Historic Bldg. 21	Facilities Special Taxes levied on All[8] **Special Debt Service credit available on Bonds**	○ FC Project Area Capital Costs ○ PNLP Payments ○ Historic Building Feasibility Gap if Zone 3 Special Taxes are insufficient ○ Debt service on Bonds secured by Pier 70 Leased Property CFD Special Taxes ○ Shoreline Adaption Studies and Shoreline Protection Facilities ○ Pier 70 Shoreline Protection Facilities

1 Capitalized terms used but not defined have the meanings given in the Appendix.

2 Application of funds described in this Schedule is subject to all priorities and limitations specified in the Financing Plan and are subject to compliance with Governing Law and Policy. Certain costs may be paid from Pier 70 CFD Proceeds only if the San Francisco Special Tax Financing Law is amended.

3 The Port may use Advances of Land Proceeds for all Capital Costs.

4 FC Project Area includes public facilities adjacent to the 28-Acre Site that are Developer Construction Obligations under the DDA.

5 By distributions at Interim Satisfaction or from Project Surplus, which includes PNLP Payments.

6 Use of funds to the extent qualified under IFD Law.

7 Use of funds to the extent qualified under IFD Law.

8 Use of funds to the extent qualified under IFD Law if Special Debt Service applies.

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
Zone 3: Historic Bldg. 12 and Historic Bldg. 21 ***All***: Zones 1, 2, and 3	Facilities Special Taxes levied in Zone 3, allocated by HB **Special Debt Service credit available on Bonds from Project Tax Increment generated in Zone 3 before Port Tax Increment, allocated by HB**	○ Historic Building Feasibility Gap ○ FC Project Area Capital Costs ○ PNLP Payments ○ Debt service on Bonds secured by Pier 70 Leased Property CFD Special Taxes
	Shoreline Special Taxes levied on Zones 1 and 2 only	○ Project Reserve Account[9] ○ Shoreline Account[10] ○ Debt service on Bonds secured by Shoreline Special Taxes
	Arts Building Special Tax levied on Zones 1 and 2 only (in combination with Pier 70 Condo CFD Arts Building Special Taxes)	○ Match up to: ○ $13.5M for Stand-Alone Noonan Building or relocated Building 11 and $4M for Arts Building (subject to conditions), or ○ $17.5M for Arts Building if Noonan Replacement Space is in Arts Building ○ $2.5M for community facilities subject to the CF Conditions ○ Any public building on Parcel E4 ○ Debt service on Bonds secured by Arts Building Special Taxes
	Services Special Taxes levied on Zones 1 and 2 only	○ FC Project Area Maintained Facilities, consisting of: ○ Public Spaces and Public ROWs in the FC Project Area; and ○ Shoreline Improvements in and adjacent to the FC Project Area

9 Pays for Capital Costs and Historic Building Feasibility Gap.

10 Pays for Shoreline Adaption Studies, Shoreline Protection Facilities, and Pier 70 Shoreline Protection Facilities.

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
Pier 70 Condo CFD (28-Acre Site, Parcel K North) ***Zone 1***: Parcel K North ***Zone 2***: Residential Condo Projects in 28-Acre Site ***All***: Zone 1 and Zone 2	Facilities Special Taxes levied on All **NO Special Debt Service credit on Bonds**	○ Michigan Street segment ○ FC Project Area Capital Costs ○ PNLP Payments ○ Historic Building Feasibility Gap if Special Taxes from Zone 3 of the Pier 70 Leased Property CFD are insufficient ○ Debt service on Bonds secured by Pier 70 Condo Special Taxes ○ Pier 70 Shoreline Protection Facilities ○ Promissory Note-X ○ Shoreline Adaption Studies and Shoreline Protection Facilities
	Arts Building Special Tax levied on Zone 2 only (in combination with Pier 70 Leased Property CFD Arts Building Special Taxes)	○ Match up to: ○ $13.5M for Stand-Alone Noonan Building or relocated Building 11 and $4M for Arts Building (subject to conditions); or ○ $17.5M for Arts Building if Noonan Replacement Space is in Arts Building ○ $2.5M for community facilities subject to the CF Conditions ○ Any public building on Parcel E4 ○ Debt service on Bonds secured by Arts Building Special Taxes
	Services Special Taxes levied on Zone 1 only	○ Parcel K North Maintained Facilities, consisting of: ○ Public Spaces and Public ROWs in Zone 1; ○ Public Spaces outside of the FC Project Area and the 20th Street CFD; ○ Public ROWs in Pier 70 north of 20th Street and outside of 20th Street CFD; and ○ Shoreline Protection Facilities.
	Services Special Taxes levied on Zone 2 only	○ FC Project Area Maintained Facilities, consisting of: ○ Public Spaces and Public ROWs in the FC Project Area; and ○ Shoreline Improvements in and adjacent to the FC Project Area.
Hoedown Yard CFD (Hoedown Yard)	Facilities Special Taxes	○ Irish Hill Park ○ Acquisition of shoreline space near former Hunters Point Power Plant ○ Other Port Capital Costs, including Shoreline Protection Studies and Shoreline Protection Facilities ○ Debt service on Bonds secured by Hoedown Yard Special Taxes

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
	Services Special Taxes	○ HDY Maintained Facilities, consisting of: ○ Public Spaces and Public ROWs in the Hoedown Yard CFD; ○ Public Spaces outside of the FC Project Area and the 20th Street CFD; ○ Public ROWs in Pier 70 north of 20th Street and outside of 20th Street CFD; and ○ Shoreline Protection Facilities.
IRFD No. 2 (Hoedown Yard)	Housing Tax Increment	○ Affordable Housing Parcels in the AHP Housing Area ○ IRFD Bond Debt Service

FIRST ADDENDUM TO FINANCING PLAN

This **FIRST ADDENDUM TO FINANCING PLAN** ("**First Addendum**") revises certain terms of the Financing Plan that is DDA Exhibit C1 to and incorporated into the Disposition and Development Agreement (the "**DDA**") between the City and County of San Francisco (including its agencies and departments, the "**City**"), acting by and through the San Francisco Port Commission (the "**Por**t" or the "**Port Commission**"), and FC Pier 70, LLC ("**Developer**") (each, a "**Party**"), that was executed on May 2, 2018 (the "**Reference Date**").

1. **Definitions.**

   a. The following terms have the following meanings in this First Addendum and are incorporated by reference in the Appendix to the Transaction Documents for the 28-Acre Site Project:

      1. **"20th/Illinois Plaza Reserve"** means a reserve account for the deposit of Residential Condo Project Tax Increment collected from Parcel K North to pay the PKN Capital Costs of the 20th/Illinois Plaza. Amounts in the 20th/Illinois Plaza Reserve do not constitute Project Payment Sources until the PKN Developer has been reimbursed for its PKN Capital Costs of the 20th/Illinois Plaza.

      2. "**Michigan Street Plaza"** means that portion of Michigan Street segment commencing from the end of the Michigan Street ROW and proceeding south to the to-be-created 21st Street.

      3. "**Michigan Street Reserve"** means a reserve account for the deposit of Facilities Special Taxes levied upon and collected from Parcel K North to pay the PKN Capital Costs of the Michigan Street ROW and the Michigan Street Plaza. Amounts in the Michigan Street Reserve do not constitute Project Payment Sources until the PKN Developer has been reimbursed for its PKN Capital Costs of the Michigan Street ROW and the Michigan Street Plaza.

      4. "**Michigan Street ROW"** means that portion of Michigan Street segment commencing from 20th Street and proceeding 150 feet south toward the to-be-created 21st Street. The Michigan Street ROW shall consist of two discrete categories of improvements referred to, and as further described in the PKN Financing Plan as the "Michigan Street Surface Improvements" and the "Michigan Street Subsurface Improvements". The Michigan Street Subsurface Improvements shall actually be constructed under the Michigan Street ROW and the Michigan Street Plaza and may include costs associated with installing or relocating Wholesale Distribution Tariff power facilities owned by the San Francisco Public Utilities Commission and serving the 20th Street Historic Core and the 28-Acre Site.

      5. **"PKN Developer"** means the vertical developer of Parcel K North.

6. **"PKN Capital Costs**" means PKN Hard and Soft Costs, PKN Development Fees and PKN Interest Costs.

7. **"PKN Development Fees**" means the development fees payable to the PKN Developer as part of each Approved Payment Request (as defined in the PKN Financing Plan) for a PKN Horizontal Improvement equal to six percent (6%) of the PKN Hard and Soft Costs in such Approved Payment Request.

8. **"PKN Financing Plan**" means the Financing Plan and Acquisition Agreement between the Port and PKN Developer.

9. **"PKN Hard and Soft Costs**" means the reasonable and customary out-of-pocket costs actually incurred and paid by PKN Developer after the effective date of the Vertical DDA between the Port and PKN Developer in connection with 20th/Illinois Plaza or the Michigan Street ROW and the Michigan Street Plaza, including labor and materials and:

    (i) architectural, engineering, consultant, attorney, and other professional fees;

    (ii) construction insurance (including general liability, automobile liability, worker's compensation, personal property, flood, pollution legal liability, comprehensive personal liability, builder's risk, and professional services insurance);

    (iii) commercially reasonable construction management fees paid by PKN Developer, a Transferee of PKN Developer, or their respective Affiliates;

    (iv) inspection, regulatory, building, encroachment, site permit and other fees directly relating to the PKN Horizontal Improvements and payable to the City, Port or any other public agency;

    (v) implementation of Mitigation Measures for 20th/Illinois Plaza or the Michigan Street ROW and the Michigan Street Plaza;

    (vi) Port costs directly related to the PKN Horizontal Improvements;

    (vii) security required in connection with the 20th/Illinois Plaza or the Michigan Street ROW and the Michigan Street Plaza;

    (viii) safety and security measures; and

    (ix) third-party costs to participate in audits, including Port Audits, and to prepare and store PKN Developer's Books and Records related to PKN Horizontal Improvements.

"**PKN Hard and Soft Costs**" excludes:

    (1) costs incurred before the effective date of Vertical DDA between the Port and PKN Developer;

(2) work that must be repaired or replaced at no additional cost due to failure to satisfy quality, quantity, types of materials, and workmanship in accordance with approved improvement plans;

(3) the PKN Developer's (or any Affiliate's) corporate office, personnel, and overhead costs;

(4) construction financing costs (loan fees and interest) for the PKN Horizontal Improvements; and

(5) costs associated with designing or constructing the vertical project on Parcel K North.

10. **"PKN Horizontal Improvements**" means the 20th/Illinois Plaza, the Michigan Street Plaza and the Michigan Street ROW.

11. "**PKN Interest Costs**" means interest at the rate of 4.38% per annum on PKN Hard and Soft Costs, as calculated and paid pursuant to the PKN Financing Plan.

12. "**Reserve Limitation"** means, so long as it is applicable to Project Area G, a five year limit imposed by IFD Law on accumulating Tax Increment before expending Tax Increment on eligible costs.

13. **"Substitute FP Exhibit E**" means the substitute FP Exhibit E attached to this First Addendum.

14. **"Substitute FP Schedule 4"** means the substitute FP Schedule 4 attached to this First Addendum.

b. Capitalized terms not defined in this Subsection are defined in the Appendix to the DDA or in the Pier 70 Condo CFD RMA.

2. **Substitute FP Exhibit E** (RMA Term Sheet).

a. When this First Addendum is fully executed, Substitute FP Exhibit E will: (i) supersede FP Exhibit E attached to the executed Financing Plan; and (ii) be deemed to be attached to and for all purposes be a part of the Financing Plan.

3. **Substitute FP Schedule 4** (Overview of Project Payment Sources (Other than Port Capital)).

a. Substitute FP Schedule 4 is attached to this First Addendum to reflect the Parties' agreement that, on a first priority basis after paying any annual debt service on Tax Increment Bonds for Sub-Project Area G-2 that are secured, in whole or in part, by Residential Condo Project Tax Increment collected from Parcel K North, the Port will deposit all Residential Condo Project Tax Increment collected from Parcel K North in the 20th/Illinois Plaza Reserve until such time as it has deposited a total of $3.5 million. In addition, the first priority use of a portion of the proceeds of Tax Increment Bonds issued for Sub-Project Area G-2 that are secured, in whole or in part, by the Residential Condo Project Tax Increment from Parcel K North shall be to reimburse the PKN Capital Costs of the 20th/Illinois Plaza; the amount of such proceeds prioritized to reimburse such PKN Capital Costs shall be equal to $3.5 million less the amount actually on deposit in the 20th/Illinois Plaza Reserve or previously paid to PKN Developer to

reimburse such PKN Capital Costs. If such Tax Increment Bonds are issued as tax-exempt bonds, the proceeds prioritized to reimburse the PKN Capital Costs shall become Project Payment Sources and applied in the same priority as set forth in Subsection 2.4(f) (Priorities for Payment) 30 months after the issuance date of such Tax Increment Bonds (subject to the earlier release as set forth in the last sentence of this subsection). The Port will use the proceeds in the 20th/Illinois Plaza Reserve and such Tax Increment Bond Proceeds to reimburse the PKN Developer for its PKN Capital Costs of the 20th/Illinois Plaza. After the 20th/Illinois Plaza is constructed, all of the moneys in the 20th/Illinois Plaza Reserve have been expended, and all the proceeds of Tax Increment Bonds issued for Sub-Project Area G-2 that are secured, in whole or in part, by the Residential Condo Project Tax Increment from Parcel K North have been expended, the Port will continue to use Bond Proceeds of Tax Increment Bonds secured by Residential Condo Project Tax Increment that are subsequently issued and Residential Condo Project Tax Increment collected from Parcel K North, to reimburse the PKN Developer for any unreimbursed PKN Capital Costs of the 20th/Illinois Plaza as a first priority use of such proceeds. When the PKN Developer has been reimbursed for all of its PKN Capital Costs of the 20th/Illinois Plaza, any Residential Condo Project Tax Increment in the 20th/Illinois Plaza Reserve and any Tax Increment Bond Proceeds prioritized to reimburse the PKN Developer for such PKN Capital Costs shall become Project Payment Sources and applied in the same priority as set forth in Subsection 2.4(f) (Priorities for Payment).

b. **Substitute FP Schedule 4** reflects the Parties' agreement that that on a first priority basis after paying any annual debt service on Mello-Roos Bonds, the Port will deposit Facilities Special Taxes levied on and collected from Parcel K North after Parcel K North becomes Developed Property in the Michigan Street Reserve until it has deposited a total of $4.3 million. The Port will use the proceeds in the Michigan Street Reserve to reimburse the PKN Developer for its PKN Capital Costs of the Michigan Street ROW and Michigan Street Plaza. In addition, the first priority use of a portion of the proceeds of Mello-Roos Bonds secured by Facilities Special Taxes from Zone 1 of the Pier 70 Condo CFD shall be to reimburse the PKN Capital Costs of the Michigan Street ROW and Michigan Street Plaza; the amount of such Bond Proceeds prioritized to reimburse such PKN Capital Costs shall be equal to $4.3 million less the amount actually on deposit in the Michigan Street Reserve or previously paid to PKN Developer to reimburse such PKN Capital Costs. If such Mello-Roos Bonds are issued as tax-exempt bonds, the Bond Proceeds prioritized to reimburse such PKN Capital Costs shall become Project Payment Sources and applied in the same priority as set forth in Subsection 2.4(f) (Priorities for Payment) 30 months after the issuance date of such Mello-Roos Bonds (subject to the earlier release as set forth in the last sentence of this subsection). After the Michigan Street ROW and Michigan Street Plaza are constructed, all of the moneys in the Michigan Street Reserve have been expended, and all of the proceeds of Mello-Roos Bonds secured by Facilities Special Taxes from Zone 1 of the Pier 70 Condo CFD have been expended, the Port will continue to use

proceeds of Mello-Roos Bonds secured by Facilities Special Taxes from the Pier 70 Condo CFD and Facilities Special Taxes levied on Parcel K North in excess of the amount required to pay debt service on such Mello-Roos Bonds, to reimburse the PKN Developer for any unreimbursed PKN Capital Costs of the Michigan Street ROW and Michigan Street Plaza as a first priority use of such proceeds. When the PKN Developer has been reimbursed for all of its PKN Capital Costs of the Michigan Street ROW and Michigan Street Plaza, any Facilities Special Taxes in the Michigan Street Reserve and any Mello-Roos Bond Proceeds prioritized to reimburse the PKN Developer for such PKN Capital Costs shall become Project Payment Sources and applied in the same priority as set forth in Subsection 2.4(f) (Priorities for Payment).

c. When this First Addendum is fully executed, **Substitute FP Schedule 4** will: (i) supersede FP Schedule 4 attached to the executed Financing Plan; and (ii) be deemed to be attached to and for all purposes be a part of the Financing Plan.

4. Interest Cost Limitation. FP § 2.3(b)(i) is superseded in its entirety and replaced by the following:

1. IFD Law imposes the Interest Cost Limitation on the use of Tax Increment and it also applies to the use of the Bond Proceeds of any Bonds secured and payable by Tax Increment. As of the Reference Date, the Interest Cost Limitation was 4.38%.

5. **Conforming Amendments to Financing Plan**. The Parties agree to the following amendments to the Financing Plan.

a. **FP § 1.5(g)** (Project Tax Increment) is amended to add the 20th/Illinois Plaza as an eligible use.

b. **FP § 1.6(b)** is superseded in its entirety and replaced by the following:

(b) 20th/Illinois Plaza. The 20th/Illinois Plaza will be an obligation of the PKN Developer. The PKN Capital Costs of the 20th/Illinois Plaza will be reimbursed as set forth in **Subsection 2(f)(ii)(8)** and the PKN Financing Plan.

c. **FP § 2.4(f)(i)** is superseded in its entirety and replaced by the following:

1. Except as provided in **Subsection 2.4(f)(ii)(8-9)** and **2.4(f)(iii)**, the Entitlement Cost Statement, as updated under **Subsection 2.3(a)** (Entitlement Cost Statement), and accrued Developer Return on the Entitlement Sum will have the highest priority for payment.

d. **FP § 2.4(f)(ii)(8-11)** are added to read as follows:

(8) Notwithstanding anything in this Agreement to the contrary, after paying any annual debt service on Tax Increment Bonds for Sub-Project Area G-2 that are secured, in whole or in part, by Residential Condo Project Tax Increment from Parcel K North, Residential Condo Project Tax Increment collected from Parcel K North will be used to deposit $3.5 million in the 20th/Illinois Plaza Reserve as a first priority use of these proceeds. In addition, the

first priority use of a portion of the proceeds of Tax Increment Bonds issued for Sub-Project Area G-2 that are secured, in whole or in part, by the Residential Condo Project Tax Increment from Parcel K North shall be to reimburse the PKN Capital Costs of the 20th/Illinois Plaza; the amount of such Bond Proceeds prioritized to reimburse such PKN Capital Costs shall be equal to $3.5 million less the amount actually on deposit in the 20th/Illinois Plaza Reserve or previously paid to PKN Developer to reimburse such PKN Capital Costs. If such Tax Increment Bonds are issued as tax-exempt bonds, the Bond Proceeds prioritized to reimburse the PKN Capital Costs shall become Project Payment Sources and applied in the same priority as set forth in Subsection 2.4(f) (Priorities for Payment) 30 months after the issuance date of such Tax Increment Bonds (subject to an earlier release set forth in subsection (10) below). If the 20th/Illinois Plaza PKN Capital Costs exceed $3.5 million, the Port will use the next available Residential Condo Project Tax Increment collected from Parcel K North that is not required to pay debt service on such Tax Increment Bonds and the Bond Proceeds of any subsequently-issued Tax Increment Bonds that are secured, in whole or in part, by the Residential Condo Project Tax Increment from Parcel K North to fund the remaining PKN Capital Costs of the 20th/Illinois Plaza. While funds are on deposit in the 20th/Illinois Plaza Reserve and while such Tax Increment Bond Proceeds are prioritized to reimburse PKN Capital Costs, they shall not be considered Project Payment Sources. Funds deposited in the 20th/Illinois Plaza Reserve will be traced by date of deposit, and it will be assumed that funds are spent on a First In, First Out (FIFO) basis. On the date that is 54 months after a fund deposit is made to the 20th/Illinois Plaza Reserve, and to the extent not deemed expended under the FIFO rule, any such amounts deposited 54 months prior shall be released from the 20th/Illinois Plaza Reserve, shall become a Project Payment Source, and shall be applied in the same priority as set forth in **Subsection 2.4(f)** (Priorities for Payment). Funds disbursed from the 20th/Illinois Plaza Reserve as a result of the Reserve Limitation will be replaced with Residential Condo Project Tax Increment collected from Parcel K North until such time as PKN Developer has been fully reimbursed for PKN Capital Costs of the 20th/Illinois Plaza. The foregoing process will be implemented on an ongoing basis so as to comply with the Reserve Limitation.

(9) Notwithstanding anything in this Agreement to the contrary, after paying any annual debt service on Mello-Roos Bonds that are secured by Facilities Special Taxes levied on and collected from Parcel K North, Facilities Special Taxes levied on and collected from Parcel K North will be used to deposit $4.3 million in the Michigan Street Reserve as a first priority use of these proceeds. In addition, the first priority use of a portion of the proceeds of Mello-Roos Bonds secured by Facilities Taxes levied on and collected from Tax Zone 1 of the Pier 70 Condo CFD shall be to

reimburse the PKN Capital Costs of the Michigan Street ROW and Michigan Street Plaza; the amount of such Bond Proceeds prioritized to reimburse such PKN Capital Costs shall be equal to $4.3 million less the amount actually on deposit in the Michigan Street Reserve or previously paid to PKN Developer to reimburse such PKN Capital Costs. While funds are on deposit in the Michigan Street Reserve and while such Mello-Roos Bond Proceeds are prioritized to reimburse PKN Capital Costs, they shall not be considered Project Payment Sources. If such Mello-Roos Bonds are issued as tax-exempt bonds, the Bond Proceeds prioritized to reimburse such PKN Capital Costs shall become Project Payment Sources and applied in the same priority as set forth in Subsection 2.4(f) (Priorities for Payment) 30 months after the issuance date of such Mello-Roos Bonds (subject to an earlier release set forth in subsection (11) below). If the PKN Capital Costs for the Michigan Street ROW and the Michigan Street Plaza exceed $4.3 million, the Port will use the next available Facilities Special Taxes levied on and collected from Parcel K North that are not required to pay debt service on such Mello-Roos Bonds and the proceeds of any additional Mello-Roos Bonds that are secured by Facilities Special Taxes levied on and collected from Tax Zone 1 of the Pier 70 Condo CFD to fund the remaining PKN Capital Costs of the Michigan Street ROW and the Michigan Street Plaza.

(10) When all of the PKN Capital Costs of the 20th/Illinois Plaza have been reimbursed to the PKN Developer, any funds remaining in the 20th/Illinois Plaza Reserve and any Tax Increment Bond Proceeds prioritized to reimburse the PKN Developer for such PKN Capital Costs will become Project Payment Sources, and will be applied in the same priority as set forth in **Subsection 2.4(f)** (Priorities for Payment).

(11) When all of the PKN Capital Costs of the Michigan Street ROW and the Michigan Street Plaza have been reimbursed to the PKN Developer, any funds remaining in the Michigan Street Reserve and any Mello-Roos Bond Proceeds prioritized to reimburse the PKN Developer for such PKN Capital Costs will become Project Payment Sources, and will be applied in the same priority as set forth in **Subsection 2.4(f)** (Priorities for Payment).

e. **FP § 2.4(f)(iii)** is superseded in its entirety and replaced by the following:

(iii) Except as provided in **FP § 2.4(f)(ii)(8-9)**, the Historic Building Feasibility Gap for Historic Building 12 and for Historic Building 21 will be paid following the determination of the final Historic Building Feasibility Gap for the respective Historical Building in accordance with **FP § 11** (Historic Buildings) from the next available Public Financing Sources.

f. **FP § 3.1(c)** is intentionally deleted.

g. **FP § 4.12** (Early Facilities Special Taxes) is superseded in its entirety and replaced by the following:

4.12 Early Facilities Special Taxes. This Section will apply if Early Mello-Roos Bonds secured by Facilities Special Taxes from either the Pier 70 Leased Property CFD or the Pier 70 Condo CFD are issued.

a. Pier 70 Leased Property CFD.

(i) Before the Port Closes Escrow on any Parcel Lease for a Development Parcel in the Pier 70 Leased Property CFD, Developer will enter into an agreement with the Vertical Developer to reimburse the Vertical Developer for, or to pay directly for, the first two years' Facilities Special Tax levy, if any, on the Development Parcel. Each payment that Developer makes under its agreement with the Vertical Developer (excluding penalties and interest) will be a Soft Cost reported on the Developer Capital Schedule. The agreement between Developer and the Vertical Developer will require the Vertical Developer to pay any Facilities Special Taxes levied on the Development Parcel if Developer fails to pay or reimburse the Facilities Special Taxes under the agreement.

(ii) Under its agreement with the Vertical Developer, Developer will only be required to pay or reimburse the Vertical Developer for the amount of the Facilities Special Tax levy that appears on the tax bill for the Development Parcel plus penalties and interest on the payment if delinquent. For example, if Bond Proceeds include capitalized interest sufficient to pay the levy during the two-year period, the CFD will not levy the tax, and no payment obligation will arise.

(iii) The Parties expect the agreement with the Vertical Developer to provide that Developer will have no obligation to pay or reimburse the Vertical Developer for any of the following with respect to a Development Parcel in the Pier 70 Leased Property CFD after the Port has conveyed the Development Parcel to a Vertical Developer:

(1) Facilities Special Taxes levied on the Development Parcel after the parcel becomes Developed Property as defined in the RMA;

(2) any other taxes levied on the Development Parcel;

(3) any more than the amount of an installment of Facilities Special Taxes when due under the tax bill, plus penalties and interest on the payment if delinquent; or

(4) more than the first two years of Facilities Special Taxes levied on the Development Parcel.

b. Pier 70 Condo CFD.

(i) The terms Undeveloped Property, Developed Property, and Exempt Property as used in the First Addendum will be defined in the RMA for the Pier 70 Condo CFD as indicated in **FP Exhibit E**. Absent the Developer Public Agreement (as defined below), property owned by the Port shall not be taxed under the the RMA

for the Pier 70 Condo CFD while such property is owned by the Port.

(ii) Prior to the issuance of each series of Mello-Roos Bonds secured by Special Taxes from the Pier 70 Condo CFD, Developer may (A) elect to pay the Facilities Special Tax levy on Undeveloped Property in the Pier 70 Condo CFD by providing written notice to the Port that it has entered into a written agreement with each Vertical Developer owner of Undeveloped Property in the Pier 70 Condo CFD to pay all such Facilities Special Taxes levied on such property (each, a "Developer Private Agreement") and/or (B) enter into an agreement with the Port to pay the Facilities Special Tax levy on property owned by the Port (the "Developer Public Agreement").

(iii) If Developer enters into such Developer Private Agreement(s), Developer will pay the Facilities Special Tax levy, if any, on Undeveloped Property in the Pier 70 Condo CFD until such Undeveloped Property becomes Developed Property. Prior to the date the Port Closes Escrow on any property in the Pier 70 Condo CFD to a Vertical Developer, Developer will enter into a Developer Private Agreement with the Vertical Developer(s) that own Undeveloped Property at that time in the Pier 70 Condo CFD to reimburse the Vertical Developer(s) for, or to pay directly for, any Facilities Special Tax levy on such Vertical Developer's property before it becomes Developed Property under the Pier 70 Condo CFD RMA.

(iv) If Developer enters into a Developer Public Agreement, Developer will pay the Facilities Special Tax levy, if any, on the property in the Pier 70 Condo CFD owned by the Port until such property is conveyed to a Vertical Developer. If the Port, in its sole discretion, agrees to allow the levy of a Facilities Special Tax on property owned by the Port in the Pier 70 Condo CFD, then the property owned by the Port in the Pier 70 Condo CFD shall no longer be deemed Exempt Property.

(v) Each Facilities Special Tax payment that Developer makes (excluding penalties and interest on delinquent amounts) under this Subsection will be a Soft Cost reported on the Developer Capital Schedule.

(vi) If Developer enters the Developer Public Agreement with the Port and fails to pay the Facilities Special Tax levied on property owned by the Port, the Port may elect to pay any Facilities Special Taxes (whether or not delinquent) in its sole discretion. If the Port elects to pay, all such Port payments, including penalties and interest, will be Port Capital reported on the Port Capital Schedule.

h. **FP § 5.2(c)** is amended to include the following:

(vi) the Port or the City, each in its sole judgment, determines that: 1) Facilities Special Taxes levied on Developed Property in the Pier 70 Condo CFD

will be insufficient to meet the Facilities Special Tax Requirement under the Pier 70 Condo CFD RMA, and (ii) Developer has not provided written notice under Section 4.12(b)(ii)(A) of its agreement to pay the Facilities Special Tax levy, if any, on Undeveloped Property in the Pier 70 Condo CFD or has provided such notice but failed to enter into the required Developer Private Agreement with the Vertical Developer(s) of Undeveloped Property in the Pier 70 Condo CFD.

FP § 5.3(h) is added to read as follows:

(h) The Port and the City will size any Early Mello Roos Bond for the Pier 70 Condo CFD issued before Parcel K North becomes Developed Property based on Improvement Special Taxes from the Pier 70 Condo CFD, excluding Facilities Special Taxes to be levied on and collected from Parcel K North unless a Developer Private Agreement is entered into between the Developer and the PKN Developer.

i. **FP § 5.5(b)(i)** is superseded in its entirety and replaced by the following:

1. The Port will use (a) Pier 70 Condo CFD Proceeds available after depositing $4.3 million in the Michigan Street Reserve and funding any PKN Capital Costs of the Michigan Street Plaza and Michigan Street ROW in excess of the amounts in the Michigan Street Reserve pursuant to **FP § 2.4(f)(ii)(9)** and (b) an Advance of Parcel K North Proceeds, to pay the Entitlement Sum determined under **Subsection 2.3(a)** (Entitlement Cost Statement) and accrued Developer Return.

j. **FP § 6.3(e)** (Priority of Residential Condo Project Tax Increment) is amended to add a new Subsection (ii) as follows:

(ii) to deposit the 20th/Illinois Plaza Reserve up to $3.5 million in Residential Condo Project Tax Increment collected from Parcel K North in the manner described in **Subsection 2.4(f)(ii)(8)** herein;

k. **FP § 6.3(e)(ii-ix)** are renumbered as **FP § 6.3(e)(iii-x).**

l. **FP § 6.6(c)** is added to read as follows:

(c) The Port and the City will size any Tax Increment Bond based on Residential Condo Project Tax Increment to exclude Residential Condo Project Tax Increment to be collected from Parcel K North if such Tax Increment Bond is issued before Parcel K North is assessed.

m. **FP § 7.4(a)(ii)(2-3)** are superseded in their entirety and replaced by the following:

(2) The Port will require the purchasers to build the 20th/Illinois Plaza and the resulting vertical development and disposition agreement will provide that the Port will reimburse the PKN Developer with Residential Condo Project Tax Increment collected from Parcel K North and Tax Increment Bonds secured by Residential Condo Project Tax Increment in the manner set forth in this Financing Plan.

(3) The Port will require the purchasers to build the Michigan Street ROW and Michigan Street Plaza and the resulting vertical development and disposition agreement will provide that the Port will reimburse PKN Developer from the Facilities Special Taxes collected from Parcel K North

and with the Mello-Roos Bond Proceeds secured and payable by Facilities Special Taxes levied on and collected from Parcel K North in the manner set forth in this Financing Plan.

6. **Counterparts**. This First Addendum may be executed in multiple counterparts, each of which will be deemed to be an original and that together will be one instrument. Parties may deliver their counterparts by electronic mail or other electronic means of transmission.

Developer and the Port have executed this First Addendum as of the last date written below.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

By: _____
Robert G. O'Brien
Vice President

Date: _____

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: _____

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

By: _____
Annette Mathai-Jackson
Deputy City Attorney

EXHIBIT B

CITY AND COUNTY OF SAN FRANCISCO
SPECIAL TAX DISTRICT NO. 2019- 1
(PIER 70 CONDOMINIUMS)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES

Special Taxes applicable to each Taxable Parcel in the City and County of San Francisco Special Tax District No. 2019-1 (Pier 70 Condominiums) shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Taxable Parcels, as described below. All Taxable Parcels in the STD shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the STD.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out duties with respect to the STD and the Bonds, including, but not limited to, levying and collecting the Special Taxes, the fees and expenses of legal counsel, charges levied by the City, including the Controller's Office, the Treasurer and Tax Collector's Office, the City Attorney, and the Port, costs related to property owner inquiries regarding the Special Taxes, costs associated with appeals or requests for interpretation associated with the Special Taxes and this RMA, costs associated with annexation of property into the STD, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements for the City and any other major property owner (whether or not deemed to be an obligated person), costs associated with foreclosure and collection of delinquent Special Taxes, and all other costs and expenses of the City in any way related to the establishment or administration of the STD.

"Administrator" means the Director of the Office of Public Finance or his/her designee who shall be responsible for administering the Special Taxes according to this RMA.

"Affordable Housing Project" means a residential or primarily residential project, as determined by the Review Authority, within which 100% of the residential units have a deed restriction recorded on title of the property that (i) limits the rental rates on the units or (ii) in any other way is intended to restrict the current or future value of the unit, as determined by the Review Authority.

"Airspace Parcel" means a Taxable Parcel with an assigned Assessor's Parcel number that constitutes vertical space of an underlying land parcel.

"Apartment Building" means a residential or mixed-use building within which all of the residential units are offered for rent to the general public and are not available for sale to or ownership by individual homebuyers.

"**Appendix**" means the Appendix to Transaction Documents for the Pier 70 28-Acre Site Project.

"Arts Building Special Tax Bonds" means any Bonds secured by the Arts Building Special Taxes that are issued to pay Arts Building Costs.

"Arts Building Costs" are $20 million in costs associated with the Arts Building, the Noonan Replacement Space and community facilities allocated under the Financing Plan, and authorized to be financed by the Arts Building Special Tax and Arts Building Special Tax Bonds by the Financing Plan and by the formation proceedings for the STD and the Leased Properties STD No. 2019-2.

"Arts Building Special Tax" means a special tax levied in Tax Zone 2 in any Fiscal Year to pay the Arts Building Special Tax Requirement**.**

"Arts Building Special Tax Requirement" means the amount necessary in any Fiscal Year to pay: (i) pay principal and interest on Arts Building Special Tax Bonds that are due in the calendar year that begins in such Fiscal Year; (ii) pay periodic costs on Arts Building Special Tax Bonds, including but not limited to, credit enhancement, liquidity support and rebate payments; (iii) replenish reserve funds created for Arts Building Special Tax Bonds under the applicable Indenture to the extent such replenishment has not been included in the computation of the Arts Building Special Tax Requirement in a previous Fiscal Year; (iv) cure any delinquencies in the payment of principal or interest on Arts Building Special Tax Bonds which have occurred in the prior Fiscal Year; (v) pay Administrative Expenses; (vi) pay other obligations described in the Financing Plan; and (vii) pay directly for Arts Building Costs. The amounts referred to in clauses (i) and (vi) may be reduced in any Fiscal Year by: (a) interest earnings on or surplus balances in funds and accounts for the Arts Building Special Tax Bonds to the extent that such earnings or balances are available to apply against such costs pursuant to the applicable Indenture; (b) in the sole and absolute discretion of the Port, proceeds received by the STD from the collection of penalties associated with delinquent Arts Building Special Taxes; and (c) any other revenues available to pay such costs, as determined by the Administrator, the City, and the Port.

"Assessor's Parcel" or **"Parcel"** means a lot or parcel, including an Airspace Parcel, shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor designating Parcels by Assessor's Parcel number.

"Authorized Expenditures" means, separately with respect to the Facilities Special Tax, Arts Building Special Tax, and Services Special Tax, those costs, facilities or public services authorized to be funded by the applicable Special Taxes as set forth in the Financing Plan and the documents adopted by the Board at STD Formation, as may be amended from time to time.

"Base Arts Building Special Tax" means, for any Square Footage Category in Tax Zone 2, the per-square foot Arts Building Special Tax identified in Table 2 in Section C below.

"Base Facilities Special Tax" means, for any Square Footage Category, the per-square foot Facilities Special Tax for Square Footage within such Square Footage Category, as identified in Table 1 in Section C below.

"Base Services Special Tax" means, for any Square Footage Category, the per-square foot Services Special Tax for Square Footage within such Square Footage Category, as identified in Table 3 in Section C below.

"Base Special Tax" means:

> *For Tax Zone 1*: collectively, the Base Facilities Special Tax and the Base Services Special Tax, and
>
> *For Tax Zone 2*: collectively, the Base Facilities Special Tax, the Base Arts Building Special Tax, and the Base Services Special Tax.

"Board" means the Board of Supervisors of the City, acting as the legislative body of STD No. 2019-1.

"Bond Sale" means, for the Facilities Special Tax, issuance of any Facilities Special Tax Bonds and, for the Arts Building Special Tax, issuance of any Arts Building Special Tax Bonds.

"Bonds" means bonds or other debt (as defined in the CFD Law), whether in one or more series, that are issued or assumed by or for the STD to finance Authorized Expenditures including any Arts Building Special Tax Bonds and Facilities Special Tax Bonds.

"Building Permit" means a permit that is issued by the Port or the City that allows for vertical construction of a building or buildings, including any addendum to a site permit, but excluding a separate permit issued for construction of building foundations.

"Capitalized Interest" means funds in any capitalized interest account available to pay debt service on Bonds.

"Certificate of Occupancy" means the first certificate, including any temporary certificate of occupancy, issued by the Port or the City to confirm that a building or a portion of a building has met all of the building codes and can be occupied for residential or non-residential use. For purposes of this RMA, "Certificate of Occupancy" shall not include any certificate of occupancy that was issued prior to January 1, 2018 for a building within the STD; however, any subsequent certificates of occupancy that are issued for new construction or expansion of a building shall be deemed a Certificate of Occupancy and the Special Taxes shall apply to the associated Square Footage.

"**CFD Law**" means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Community Facilities Act of 1982 (Cal. Gov't Code §§ 53311-53368).

"City" means the City and County of San Francisco, California.

"County" means the City and County of San Francisco, California.

"DDA" means the Disposition and Development Agreement between the Port and the Developer, including all exhibits and attachments, as may be amended from time to time.

"Deputy Director" means the Deputy Director of Finance and Administration for the Port or other such official that acts as the chief financial officer for the Port.

"Developed Property" means, in any Fiscal Year, the following:

For Tax Zone 1:

For levy of the Facilities Special Tax: all Taxable Parcels for which the 36-month anniversary of the VDDA Execution Date has occurred in a preceding Fiscal Year, regardless of whether a Building Permit has been issued.

For levy of the Services Special Tax: all Taxable Parcels for which a Certificate of Occupancy was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

For Tax Zone 2:

For levy of the Facilities Special Tax and Arts Building Special Tax: all Taxable Parcels for which the 36-month anniversary of the VDDA Execution Date has occurred in a preceding Fiscal Year, regardless of whether a Building Permit has been issued.

For levy of the Services Special Tax: all Taxable Parcels for which a Certificate of Occupancy was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

"Developer" means FC Pier 70, LLC, or any successor or assign, as tenant under the Master Lease.

"Developer Private Agreement" means all of the following: (i) the Developer has agreed pursuant to Section 4.12(b)(2)(A) of the Financing Plan to pay the Facilities Special Tax on Undeveloped Property of Vertical Developers; (ii) the Developer has entered into such a written agreement with each Vertical Developer; and (iii) the San Francisco Port Commission has agreed to the levy of a Facilities Special Tax on Undeveloped Property based on such agreements.

"Developer Public Agreement" means all of the following: (i) the Developer has entered into an agreement with the Port pursuant to Section 4.12(b)(2)(B) of the Financing Plan to pay the Facilities Special Tax on Port-Owned Development Parcels; and (ii) the San Francisco Port Commission has agreed to the levy of Facilities Special Taxes on the Port-Owned Development Parcels.

"Development Approval Documents" means, collectively, the DDA, any Vertical DDAs, any Final Maps, Review Authority approvals, condominium plans, or other such approved or recorded document or plan that identifies the type of structure(s), acreage, or Square Footage approved for development on Taxable Parcels.

"Escalator" means the lesser of the following: (i) the annual percentage increase, if any, in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-Hayward region (base years 1982-1984=100) published by the Bureau of Labor Statistics of the United States Department of Labor, or, if such index is no longer published, a similar escalator that is determined by the Port and City to be appropriate, and (ii) five percent (5%).

"Estimated Base Arts Building Special Tax Revenues" means, at any point in time, the amount calculated by the Administrator by multiplying the Base Arts Building Special Tax by Square Footage within each Square Footage Category proposed for development in Tax Zone 2 and, if applicable, in completed buildings on a Taxable Parcel in Tax Zone 2.

"Estimated Base Facilities Special Tax Revenues" means, at any point in time, the amount calculated by the Administrator by multiplying the Base Facilities Special Tax by Square Footage within each Square Footage Category proposed for development and, if applicable, in completed buildings on a Taxable Parcel.

"Exempt Non-Residential Square Footage" means any ground level retail uses within a building that is otherwise comprised of Residential Square Footage, as reflected on the Building Permit or Vertical DDA and as determined in the sole discretion of the Administrator and the Port. If, in any Fiscal Year, the Administrator identifies Non-Residential Square Footage on a ground level Parcel that had been taxed in the prior Fiscal Year based on Residential Square Footage that had been constructed, or expected to be constructed, on the Parcel, the Administrator will apply Section D.3 to determine if the Non-Residential Square Footage will be Exempt Non-Residential Square Footage or Taxable Non-Residential Square Footage.

"Expected Land Uses" means the total Square Footage in each Square Footage Category expected on each Planning Parcel in the STD. The Expected Land Uses at STD Formation are identified in Attachment 3 and may be revised pursuant to Sections B, C, D, and E below.

"Expected Maximum Arts Building Special Tax Revenues" means the aggregate Arts Building Special Tax that can be levied based on application of the Base Arts Building Special Tax to the Expected Land Uses in Tax Zone 2. The Expected Maximum Arts Building Special Tax Revenues for each Planning Parcel in Tax Zone 2 at the time of STD Formation are shown in Attachment 3 and may be revised pursuant to Sections B, C, D, and E below.

"Expected Maximum Facilities Special Tax Revenues" means the aggregate Facilities Special Tax that can be levied based on application of the Base Facilities Special Tax to the Expected Land Uses. The Expected Maximum Facilities Special Tax Revenues for each Planning Parcel at STD Formation are shown in Attachment 3 and may be revised pursuant to Sections B, C, D, and E below.

"Expected Taxable Property" means, in any Fiscal Year, any Parcel within the STD that: (i) pursuant to the Development Approval Documents, was expected to be a Taxable Parcel; (ii) is

not a Port-Owned Development Parcel; (iii) based on the Expected Land Uses, was assigned Expected Maximum Facilities Special Tax Revenues or Expected Maximum Arts Building Special Tax Revenues; and (iv) subsequently falls within one or more of the categories that would otherwise be exempt from Special Taxes pursuant to Section H below.

"Facilities Special Tax" means a special tax levied in any Fiscal Year to pay the Facilities Special Tax Requirement.

"Facilities Special Tax Bonds" means any Bonds secured by Facilities Special Taxes.

"Facilities Special Tax Requirement" means the amount necessary in any Fiscal Year to pay: (i) pay principal and interest on Facilities Special Tax Bonds that are due in the calendar year that begins in such Fiscal Year; (ii) pay periodic costs on Facilities Special Tax Bonds, including but not limited to, credit enhancement, liquidity support and rebate payments; (iii) replenish reserve funds created for Facilities Special Tax Bonds under the applicable Indenture to the extent such replenishment has not been included in the computation of the Facilities Special Tax Requirement in a previous Fiscal Year; (iv) cure any delinquencies in the payment of principal or interest on Facilities Special Tax Bonds which have occurred in the prior Fiscal Year; (v) pay Administrative Expenses; (vi) pay other obligations described in the Financing Plan; and (vii) pay directly for Authorized Expenditures, so long as such levy under this clause (vii) does not increase the Facilities Special Tax levied on Undeveloped Property. The amounts referred to in clauses (i) and (vi) may be reduced in any Fiscal Year by: (a) interest earnings on or surplus balances in funds and accounts for the Facilities Special Tax Bonds to the extent that such earnings or balances are available to apply against such costs pursuant to the applicable Indenture; (b) in the sole and absolute discretion of the Port, proceeds received by the STD from the collection of penalties associated with delinquent Facilities Special Taxes; and (c) any other revenues available to pay such costs, as determined by the Administrator, the City, and the Port.

"Final Map" means a final map, or portion thereof, recorded by the County pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq.*) that creates individual lots on which Building Permits for new construction may be issued without further subdivision.

"Financing Plan" means the Financing Plan attached as Exhibit C1 to, and incorporated into, the DDA, as such plan may be amended or supplemented from time to time in accordance with the terms of the DDA.

"First Bond Sale" means, for the Facilities Special Tax, a Bond Sale of the first series of Facilities Special Tax Bonds, and, for the Arts Building Special Tax, a Bond Sale of the first series of Arts Building Special Tax Bonds.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"For-Sale Residential Square Footage" means the Square Footage within one or more For-Sale Residential Units.

"For-Sale Residential Unit" means an individual Residential Unit that is not a Rental Unit.

"Future Annexation Area" means that geographic area that, at STD Formation, was considered potential annexation area for the STD and which was, therefore, identified as "future annexation area" on the recorded STD boundary map. Such designation does not mean that any or all of the Future Annexation Area will annex into the STD, but should owners of property designated as Future Annexation Area choose to annex, the annexation may be processed pursuant to the annexation procedures in the CFD Law for territory included in a future annexation area, as well as the procedures established by the Board.

"Indenture" means any indenture, fiscal agent agreement, resolution, or other instrument pursuant to which Bonds are issued, as modified, amended, or supplemented from time to time, and any instrument replacing or supplementing the same.

"Land Use Change" means a change to the Expected Land Uses after STD Formation.

"Leased Properties STD No. 2019-2" means the City and County of San Francisco Special Tax District No. 2019-2 (Pier 70 Leased Properties).

"Master Lease" means a lease for all or part of the 28-Acre Site that, with licenses for other portions of Pier 70, allows the Developer to take possession of the FC Project Area (as defined in the Appendix) and construct horizontal improvements approved under the DDA.

"**Maximum Arts Building Special Tax"** means the greatest amount of Arts Building Special Tax that can be levied on a Taxable Parcel in Tax Zone 2 in any Fiscal Year determined in accordance with Sections C, D, and E below.

"Maximum Arts Building Special Tax Revenues" means, at any point in time, the aggregate Maximum Arts Building Special Tax that can be levied on all Taxable Parcels in Tax Zone 2.

"**Maximum Facilities Special Tax"** means the greatest amount of Facilities Special Tax that can be levied on a Taxable Parcel in any Fiscal Year determined in accordance with Sections C, D, and E below.

"Maximum Facilities Special Tax Revenues" means, at any point in time, the aggregate Maximum Facilities Special Tax that can be levied on all Taxable Parcels.

"Maximum Services Special Tax" means the greatest amount of Services Special Tax that can be levied on a Taxable Parcel in any Fiscal Year determined in accordance with Sections C, D, and E below.

"Maximum Services Special Tax Revenues" means, at any point in time, the aggregate Maximum Services Special Tax that can be levied on all Taxable Parcels.

"**Maximum Special Tax"** means, for any Taxable Parcel in Tax Zone 1 in any Fiscal Year, the sum of the Maximum Facilities Special Tax and Maximum Services Special Tax. For any Taxable Parcel in Tax Zone 2, "Maximum Special Tax**"** means in any Fiscal Year, the sum of the Maximum Facilities Special Tax, Maximum Arts Building Special Tax, and Maximum Services Special Tax.

"Maximum Special Tax Revenues" means, collectively, the Maximum Facilities Special Tax Revenues, the Maximum Arts Building Special Tax Revenues, and the Maximum Services Special Tax Revenues.

"Non-Residential Square Footage" means Square Footage that is or is expected to be space within any structure or portion thereof intended or primarily suitable for, or accessory to, occupancy by retail, office, commercial, or any other Square Footage in a building that does not meet the definition of Residential Square Footage. The Administrator, in conjunction with the Review Authority, shall make the final determination as to the amount of Non-Residential Square Footage on any Taxable Parcel within the STD, and such determination shall be conclusive and binding. Incidental retail or commercial uses in an Affordable Housing Project shall be Exempt Non-Residential Square Footage. Non-Residential Square Foot means a single square-foot unit of Non-Residential Square Footage.

"Planning Code" means the Planning Code of the City and County of San Francisco, as it may be amended from time to time.

"Planning Parcel" means a geographic area within the STD that, for planning and entitlement purposes, has been designated as a separate Parcel with an alpha, numeric, or alpha-numeric identifier to be used for reference until an Assessor's Parcel is created and an Assessor's Parcel number is assigned. The Planning Parcels at STD Formation are identified in Attachment 1 hereto.

"Port" means the Port of San Francisco.

"Port-Owned Development Parcel" means any Parcel of Undeveloped Property in the STD that is anticipated to be developed by a Vertical Developer but which is, at the time of calculation of a Special Tax levy, owned by the Port.

"Proportionately" means, for Developed Property, that the ratio of the actual Services Special Tax levied in any Fiscal Year to the Maximum Services Special Tax authorized to be levied in that Fiscal Year is equal for all Parcels of Developed Property in the same zone. For Undeveloped Property, "Proportionately" means that the ratio of the actual Facilities Special Tax levied to the Maximum Facilities Special Tax is equal for all Parcels of Undeveloped Property in the same zone. For Expected Taxable Property, "Proportionately" means that the ratio of the actual Facilities Special Tax and Arts Building Special Tax levied to the Maximum Facilities Special Tax and Maximum Arts Building Special Tax is equal for all Parcels of Expected Taxable Property in the same zone.

"Public Property" means any property within the boundaries of the STD that is owned by or leased to the federal government, State of California, City, or public agency other than the Port. Notwithstanding the foregoing, any property subject to a Vertical DDA shall not, during the lease term, be considered Public Property and shall be taxed and classified according to the use on the Parcel(s).

"Remainder Special Taxes" means, as calculated between September 1st and December 31st of any Fiscal Year, any Facilities Special Tax and Arts Building Special Tax revenues that were collected in the prior Fiscal Year and were not needed to: (i) pay debt service on the applicable

Facilities Special Tax Bonds or Arts Building Special Tax Bonds that was due in the calendar year that begins in the Fiscal Year in which the Remainder Special Taxes were levied; (ii) pay periodic costs on the applicable Facilities Special Tax Bonds or Arts Building Special Tax Bonds, including but not limited to, credit enhancement, liquidity support and rebate payments on such Facilities Special Tax Bonds or Arts Building Special Tax Bonds; (iii) replenish reserve funds created for the applicable Facilities Special Tax Bonds or Arts Building Special Tax Bonds under the Indenture; (iv) cure any delinquencies in the payment of principal or interest on the applicable Facilities Special Tax Bonds or Arts Building Special Tax Bonds which have occurred in the prior Fiscal Year; (v) pay other obligations described in the Financing Plan; or (vi) pay Administrative Expenses that have been incurred, or are expected to be incurred, by the City and Port prior to the receipt of additional Facilities Special Tax and Arts Building Special Tax proceeds.

"Rental Residential Square Footage" means Square Footage that is or is expected to be used for one or more of the following uses: (i) Rental Units; (ii) any type of group or student housing that provides lodging for a week or more and may or may not have individual cooking facilities, including but not limited to boarding houses, dormitories, housing operated by medical institutions, and single room occupancy units; or (iii) a residential care facility that is not staffed by licensed medical professionals. The Review Authority shall make the determination as to the amount of Rental Residential Square Footage on a Taxable Parcel in the STD.

"Rental Unit" means a Residential Unit within an Apartment Building.

"Required Coverage" means (i) for Arts Building Special Tax Bonds, the amount by which the Maximum Arts Building Special Tax Revenues must exceed the Arts Building Special Tax Bond debt service and priority Administrative Expenses (if any), as set forth in the applicable Indenture, Certificate of Special Tax Consultant, or other STD Formation Proceedings or Bond document that identifies the minimum required debt service coverage; and (ii) for Facilities Special Tax Bonds, the amount by which the Maximum Facilities Special Tax Revenues must exceed the Facilities Special Tax Bond debt service and priority Administrative Expenses (if any), as set forth in the applicable Indenture, Certificate of Special Tax Consultant, or other STD Formation Proceedings or Bond document that identifies the minimum required debt service coverage.

"Residential Square Footage" means, collectively, For-Sale Residential Square Footage and Rental Residential Square Footage. Residential Square Foot means a single square-foot unit of Residential Square Footage.

"Residential Unit" means a room or suite of two or more rooms that is designed for residential occupancy for 32 consecutive days or more, including provisions for sleeping, eating and sanitation. "Residential Unit" includes, but is not limited to, an individual townhome, condominium, flat, apartment, or loft unit, and individual units within a senior or assisted living facility.

"Review Authority" means the Deputy Director of Real Estate & Development for the Port or an alternate designee from the Port or the City who is responsible for approvals and entitlements of a development project.

"RMA" means this Rate and Method of Apportionment of Special Taxes.

"Services Special Tax" means a special tax levied in any Fiscal Year to pay the Services Special Tax Requirement.

"Services Special Tax Requirement" means the amount necessary in any Fiscal Year to: (i) pay the costs of operations and maintenance or other public services that are included as Authorized Expenditures; (ii) cure delinquencies in the payment of Services Special Taxes in the prior Fiscal Year; and (iii) pay Administrative Expenses.

"Special Taxes" means:

For Tax Zone 1: the Facilities Special Tax and Services Special Tax.

For Tax Zone 2: the Facilities Special Tax, Arts Building Special Tax, and Services Special Tax.

"Square Footage" means: (i) for Rental Residential Square Footage and Non-Residential Square Footage, the net saleable square footage on a Taxable Parcel, as determined by the Review Authority in conjunction with the Vertical Developer; and (ii) for For-Sale Residential Square Footage, the square footage of each individual Residential Unit, as reflected on a condominium plan, site plan, or Building Permit, provided by the Vertical Developer or the Port, or expected pursuant to Development Approval Documents. If a Building Permit is issued that will increase the Square Footage on any Parcel, the Administrator shall, in the first Fiscal Year after the final Building Permit inspection has been conducted in association with such expansion, work with the Review Authority to recalculate (i) the Square Footage on the Taxable Parcel, and (ii) the Maximum Special Taxes for the Parcel based on the increased Square Footage. The final determination of Square Footage for each Square Footage Category on each Taxable Parcel shall be made by the Review Authority.

"Square Footage Category" means, individually, Non-Residential Square Footage or Residential Square Footage.

"STD" or **"STD No. 2019-1"** means the City and County of San Francisco Special Tax District No. 2019-1 (Pier 70 Condominiums).

"STD Formation" means the date on which the Board approved documents to form the STD.

"STD Formation Proceedings" means the proceedings to form the STD, including all resolutions, reports, and notices.

"Tax-Exempt Port Parcels" means Port-owned parcels that are or are intended to be used as streets, walkways, alleys, rights of way, parks, or open space.

"Tax Zone" means a separate and distinct geographic area in the STD within which one or more Special Taxes are applied at a rate or in a manner that is different than in other areas within the STD. The two Tax Zones at STD Formation are identified in Attachment 2 hereto.

"Taxable Non-Residential Square Footage" means any Non-Residential Square Footage in a building that does not meet the definition of Exempt Non-Residential Square Footage.

"Taxable Parcel" means any Parcel within the STD that is not exempt from Special Taxes pursuant to law or Section H below.

"Transition Event" shall be deemed to have occurred when the Administrator determines that: (i) all Arts Building Special Tax Bonds secured by the levy and collection of Arts Building Special Taxes in Tax Zone 2 have been fully repaid or there are sufficient revenues available to fully repay the Arts Building Special Tax Bonds in funds and accounts that, pursuant to the applicable Indenture, will require such revenues to be applied to repay the Arts Building Special Tax Bonds; (ii) all Administrative Expenses from prior Fiscal Years have been paid or reimbursed to the City; and (iii) the proportional share of Arts Building Costs allocated to Tax Zone 2 have been paid, as determined by the Port.

"Transition Year" means the first Fiscal Year in which the Administrator determines that the Transition Event occurred in the prior Fiscal Year.

"Undeveloped Property" means, in any Fiscal Year, all Taxable Parcels that are not Developed Property, or Expected Taxable Property.

"VDDA Execution Date" means the date on which a Vertical DDA was executed between the Port and a Vertical Developer.

"Vertical DDA" means, for a Taxable Parcel, an executed Vertical Disposition and Development Agreement between the Port and a Vertical Developer.

"Vertical Developer" means a developer that has entered into a Vertical DDA for construction of vertical improvements on a Taxable Parcel.

B. DATA FOR STD ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor's Parcel numbers for all Taxable Parcels. The Administrator shall also determine: (i) whether each Taxable Parcel is Developed Property, Undeveloped Property (including Port-Owned Development Parcels), or Expected Taxable Property; (ii) the Planning Parcel and Tax Zone within which each Assessor's Parcel is located; (iii) for Developed Property, the For-Sale Residential Square Footage, Rental Residential Square Footage, Exempt Non-Residential Square Footage, and Taxable Non-Residential Square Footage on each Parcel; and (iv) the Facilities Special Tax Requirement, Arts Building Special Tax Requirement, and Services Special Tax Requirement for the Fiscal Year.

The Administrator shall also: (i) coordinate with the Deputy Director to determine whether the Transition Event occurred in the prior Fiscal Year; (ii) coordinate with the Treasurer-Tax Collector's Office to determine if there have been any Special Tax delinquencies or repayment of Special Tax delinquencies in prior Fiscal Years; (iii) in consultation with the Review Authority, review the Development Approval Documents and communicate with the Developer and

Vertical Developers regarding proposed Land Use Changes; and (iv) upon each annexation, Land Use Change, and notification of executed Vertical DDAs, update Attachment 3 to reflect the then-current Expected Land Uses, Expected Maximum Facilities Special Tax Revenues and Expected Maximum Arts Building Special Tax Revenues. The Developer, Port, and Vertical Developer shall notify the Administrator each time a Vertical DDA is executed in order for the Administrator to keep track of VDDA Execution Dates for each Vertical DDA.

In any Fiscal Year, if it is determined that (i) a parcel map or condominium plan was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the map or plan was recorded, the Assessor does not yet recognize the newly-created Parcels, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Taxes for the property affected by recordation of the map or plan by determining the Special Taxes that applies separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map or condominium plan.

C. MAXIMUM SPECIAL TAXES

In calculating Maximum Special Taxes pursuant to this Section C, in any Fiscal Year in which the boundaries of the Planning Parcels are not identical to the boundaries of the then-current Assessor's Parcels, the Administrator shall review the Expected Land Uses for each Planning Parcel and assign the Maximum Special Taxes to the then-current Assessor's Parcels. The Maximum Special Tax Revenues after such allocation shall not be less than the Maximum Special Tax Revenues prior to the allocation.

1. Undeveloped Property

1a. Facilities Special Tax

The Maximum Facilities Special Tax for Undeveloped Property in all Tax Zones shall be the Expected Maximum Facilities Special Tax Revenues shown in Attachment 3 of this RMA, as it may be amended as set forth herein.

1b. Arts Building Special Tax and Services Special Tax

No Arts Building Special Tax or Services Special Tax shall be levied on Parcels of Undeveloped Property in any Tax Zone within the STD.

2. Developed Property

2a. Facilities Special Tax

When a Taxable Parcel (or multiple Taxable Parcels within a building) becomes Developed Property, the Administrator shall use the Base Facilities Special Taxes shown in Table 1 below and apply the steps set forth in this Section 2a to determine the Maximum Facilities Special Tax for the Parcel(s):

Step 1. The Administrator shall review the Building Permit, Certificate of Occupancy, Vertical DDA, condominium plan, architectural drawings, Development Approval Documents, information provided by the Developer, or Vertical Developer, and any other documents or data that estimate or identify the Residential Square Footage or Non-Residential Square Footage anticipated on the Taxable Parcel(s).

. *Step 2.* Using the information from Step 1:

- Based on the Tax Zone in which the Taxable Parcel(s) is located, multiply the applicable Base Facilities Special Tax from Table 1 for Residential Square Footage by the total Residential Square Footage expected within each building on the Taxable Parcel(s).

- Based on the Tax Zone in which the Taxable Parcel(s) is located, multiply the applicable Base Facilities Special Tax from Table 1 for Taxable Non-Residential Square Footage by the total Taxable Non-Residential Square Footage expected within each building on the Taxable Parcel(s).

- If, based on the Expected Land Uses, the Administrator determines that there is Expected Taxable Property within any building, multiply the applicable Base Facilities Special Tax from Table 1 based on what had been anticipated on the Expected Taxable Property by the Square Footage of the Expected Land Uses for that Expected Taxable Property.

Prior to the First Bond Sale, the Maximum Facilities Special Tax for the Taxable Parcel(s) shall be the sum of the amounts calculated above, and Steps 3 and 4 below shall not apply.

After the First Bond Sale, the Administrator shall apply Steps 3 and 4 to determine the Maximum Facilities Special Tax for the Taxable Parcel(s).

Step 3. Sum the amounts calculated in Step 2 to determine the Estimated Base Facilities Special Tax Revenues for the Taxable Parcel(s).

Step 4. Compare the Estimated Base Facilities Special Tax Revenues from Step 3 to the Expected Maximum Facilities Special Tax Revenues, and apply one of the following, as applicable:

- *If the Estimated Base Facilities Special Tax Revenues are: (i) <u>greater than or equal to</u> the Expected Maximum Facilities Special Tax Revenues or (ii) <u>less than</u> the Expected Maximum Facilities Special Tax Revenues, but the Maximum Facilities Special Tax Revenues, assuming the same land uses that went into the calculation of the Estimated Base Facilities Special Tax Revenues, are still sufficient to provide Required Coverage*, then the Maximum Facilities Special Tax for the Taxable Parcel(s) shall

be determined by multiplying the applicable Base Facilities Special Taxes by the Square Footage of each Square Footage Category expected within the building(s) on the Taxable Parcel(s). The Administrator shall update Attachment 3 to reflect the adjusted Expected Maximum Facilities Special Tax Revenues and the new Maximum Facilities Special Tax Revenues.

- *If the Estimated Base Facilities Special Tax Revenues are less than the Expected Maximum Facilities Special Tax Revenues, and the Maximum Facilities Special Tax Revenues, assuming the same land uses that went into the calculation of the Estimated Base Facilities Special Tax Revenues, are insufficient to provide Required Coverage*, then the Base Facilities Special Taxes that were applied in Step 4 shall be increased proportionately until the amount that can be levied on the Taxable Parcel(s), combined with the Expected Maximum Facilities Special Tax Revenues from other Planning Parcels in the STD, is sufficient to maintain Required Coverage; provided, however, such increase cannot exceed, in the aggregate, the amount by which Expected Maximum Facilities Special Tax Revenues from the Taxable Parcel exceeds the Estimated Base Facilities Special Tax Revenues from the Taxable Parcel(s).

  After proportionately increasing the Base Facilities Special Taxes to an amount that will maintain Required Coverage, the Administrator shall use the adjusted per-square foot rates to calculate the Maximum Facilities Special Tax for each Taxable Parcel for which the increased Base Facilities Special Tax was determined to be necessary pursuant to this Step 4. The Administrator shall also revise Attachment 3 to reflect the new Expected Maximum Facilities Special Tax Revenues.

Table 1
Base Facilities Special Tax

Square Footage Category	Base Facilities Special Tax in Tax Zone 1 (FY 2017-18) *	Base Facilities Special Tax in Tax Zone 2 (FY 2017-18) *
Residential Square Footage	$5.02 per Residential Square Foot	$4.70 per Residential Square Foot
Taxable Non-Residential Square Footage	$5.02 per Non-Residential Square Foot	$4.70 per Non-Residential Square Foot

*** The Base Facilities Special Taxes shown above shall be escalated as set forth in Section D.1.**

Unless and until individual Assessor's Parcels are created for Non-Residential Square Footage and Residential Square Footage within a building, the Administrator shall sum the Facilities Special Tax that, pursuant to Section F below, would be levied on all land

uses on a Taxable Parcel and levy this aggregate Facilities Special Tax amount on the Taxable Parcel.

If, in any Fiscal Year, the Maximum Facilities Special Tax is determined for any Parcels of Developed Property for which a Building Permit had not yet been issued and, if, when a Building Permit is issued on the Parcel, the Residential Square Footage or Non-Residential Square Footage is different than the Residential Square Footage or Non-Residential Square Footage that was used to determine the Maximum Facilities Special Tax, then the Administrator shall once again apply Steps 1 through 4 in this Section C.2a to recalculate the Maximum Facilities Special Tax for the Parcel based on the Residential Square Footage or Non-Residential Square Footage that was determined when the Building Permit was issued. The Administrator shall do a final check of the Residential Square Footage and Non-Residential Square Footage for the Parcel when a Certificate of Occupancy is issued. Once again, if the Residential Square Footage or Non-Residential Square Footage is different than the Residential Square Footage or Non-Residential Square Footage that was used to determine the Maximum Facilities Special Tax after the Building Permit was issued, then the Administrator shall apply Steps 1 through 4 in this Section C.2a to recalculate the Maximum Facilities Special Tax for the Parcel.

2b. Arts Building Special Tax

Prior to the Transition Year, when a Taxable Parcel (or multiple Taxable Parcels within a building) in Tax Zone 2 becomes Developed Property, the Administrator shall use the Base Arts Building Special Taxes shown in Table 2 below and apply the steps set forth in this Section 2b to determine the Maximum Arts Building Special Tax for the Taxable Parcel(s). No Arts Building Special Tax shall be levied on Parcels in Tax Zone 1.

Table 2
Base Arts Building Special Tax in Tax Zone 2

Square Footage Category	Base Arts Building Special Tax in Tax Zone 2 Before the Transition Year (FY 2017-18) *	Base Arts Building Special Tax in Tax Zone 2 in and After the Transition Year (FY 2017-18) *
Residential Square Footage	$0.64 per Residential Square Foot	$0.00 per Residential Square Foot
Taxable Non-Residential Square Footage	$0.64 per Non-Residential Square Foot	$0.00 per Non-Residential Square Foot

*** The Base Arts Building Special Taxes shown above shall be escalated as set forth in Section D.1.**

Step 1. The Administrator shall review the Building Permit, Certificate of Occupancy, Vertical DDA, condominium plan, architectural drawings, Development Approval Documents, information provided by the Port, Developer or Vertical Developer, and any other documents or data that estimate or identify the Square Footage within each Square Footage Category to determine Residential Square Footage or Non-Residential Square Footage anticipated within each building on the Taxable Parcel(s).

. *Step 2.* Using the information from Step 1:

- For Tax Zone 2 only, multiply the applicable Base Arts Building Special Tax from Table 2 for Residential Square Footage by the total Residential Square Footage expected within each building on the Taxable Parcel(s).

- For Tax Zone 2 only, multiply the applicable Base Arts Building Special Tax from Table 2 for Taxable Non-Residential Square Footage by the total Taxable Non-Residential Square Footage expected on the Taxable Parcel(s).

- If, based on the Expected Land Uses, the Administrator determines that there is Expected Taxable Property within the building(s) in Tax Zone 2, multiply the applicable Base Arts Building Special Tax from Table 2 based on what had been anticipated on the Expected Taxable Property by the Square Footage of the Expected Land Uses within each building.

Prior to the First Bond Sale, the Maximum Arts Building Special Tax for the Taxable Parcel(s) shall be the sum of the amounts calculated above, and Steps 3 and 4 below shall not apply.

After the First Bond Sale, the Administrator shall apply Steps 3 and 4 to determine the Maximum Arts Building Special Tax for the Taxable Parcel(s).

Step 3. Sum the amounts calculated in Step 2 to determine the Estimated Base Arts Building Special Tax Revenues for the Taxable Parcel(s).

Step 4. Compare the Estimated Base Arts Building Special Tax Revenues from Step 3 to the Expected Maximum Arts Building Special Tax Revenues, and apply one of the following, as applicable:

- *If the Estimated Base Arts Building Special Tax Revenues are: (i) greater than or equal to the Expected Maximum Arts Building Special Tax Revenues or (ii) less than the Expected Maximum Arts Building Special Tax Revenues, but the Maximum Arts Building Special Tax Revenues, assuming the same land uses that went into the calculation of the Estimated Base Arts Building Special Tax Revenues, are still sufficient to provide Required Coverage*, then the Maximum Arts Building Special Tax for each Taxable Parcel shall be determined by multiplying the applicable Base Arts Building Special Taxes by the Square Footage of each Square Footage Category expected within the building(s) on the Taxable Parcel(s). The Administrator shall update Attachment 3 to reflect the adjusted Expected Maximum Arts Building Special Tax Revenues and the new Maximum Arts Building Special Tax Revenues.

- *If the Estimated Base Arts Building Special Tax Revenues are less than the Expected Maximum Arts Building Special Tax Revenues, and the*

Maximum Arts Building Special Tax Revenues, assuming the same land uses that went into the calculation of the Estimated Base Arts Building Special Tax Revenues, are insufficient to provide Required Coverage, then the Base Arts Building Special Taxes that were applied in Step 4 shall be increased proportionately until the amount that can be levied on the Taxable Parcel(s), combined with the Expected Maximum Arts Building Special Tax Revenues from other Planning Parcels in the STD, is sufficient to maintain Required Coverage; provided, however, such increase cannot exceed, in the aggregate, the amount by which Expected Maximum Arts Building Special Tax Revenues from the Taxable Parcel exceeds the Estimated Base Arts Building Special Tax Revenues from the Taxable Parcel(s).

After proportionately increasing the Base Arts Building Special Taxes to an amount that will maintain Required Coverage, the Administrator shall use the adjusted per-square foot rates to calculate the Maximum Arts Building Special Tax for each Taxable Parcel for which the increased Base Arts Building Special Tax was determined to be necessary pursuant to this Step 4. The Administrator shall also revise Attachment 3 to reflect the new Expected Maximum Arts Building Special Tax Revenues.

Unless and until individual Assessor's Parcels are created for Non-Residential Square Footage and Residential Square Footage within a building, the Administrator shall sum the Arts Building Special Tax that, pursuant to Section F below, would be levied on all land uses on a Parcel and levy this aggregate Arts Building Special Tax amount on the Parcel.

If, in any Fiscal Year, the Maximum Arts Building Special Tax is determined for any Parcels of Developed Property for which a Building Permit had not yet been issued and, if, when a Building Permit is issued on the Parcel, the Residential Square Footage or Non-Residential Square Footage is different than the Residential Square Footage or Non-Residential Square Footage that was used to determine the Maximum Arts Building Special Tax, then the Administrator shall once again apply Steps 1 through 4 in this Section C.2b to recalculate the Maximum Arts Building Special Tax for the Parcel(s) based on the Residential Square Footage or Non-Residential Square Footage that was determined when the Building Permit was issued. The Administrator shall do a final check of the Residential Square Footage and Non-Residential Square Footage within the building when a Certificate of Occupancy is issued. Once again, if the Residential Square Footage or Non-Residential Square Footage is different than the Residential Square Footage or Non-Residential Square Footage that was used to determine the Maximum Arts Building Special Tax after the Building Permit was issued, then the Administrator shall apply Steps 1 through 4 in this Section C.2b to recalculate the Maximum Arts Building Special Tax for the Parcel.

If one or more Building Permits have been issued for development of structures on a Taxable Parcel, and additional structures are anticipated to be built on the Taxable Parcel as shown in the Development Approval Documents, the Administrator shall, regardless of the definitions set forth herein, categorize the buildings for which Building Permits

have been issued as Developed Property and, if the 36-month anniversary of the VDDA Execution Date has not occurred in a previous Fiscal Year, any remaining buildings for which Building Permits have not yet been issued shall not be subject to a Arts Building Special Tax until either: (i) a Building Permit is issued for such remaining buildings, or (ii) the Fiscal Year in which the 36-month anniversary of the VDDA Execution Date. To determine the Arts Building Special Tax for any such Parcel, the Administrator shall take the sum of the Arts Building Special Taxes determined for each building.

2c. Services Special Tax

Upon issuance of the first Certificate of Occupancy for a building on a Taxable Parcel, the Administrator shall reference Table 3 and apply the steps below to determine the Maximum Services Special Tax for the Parcel:

Table 3
Base Services Special Tax

Square Footage Category	Base Services Special Tax in Tax Zone 1 (FY 2017-18)*	Base Services Special Tax in Tax Zone 2 Before the Transition Year (FY 2017-18) *	Base Services Special Tax in Tax Zone 2 In and After the Transition Year (FY 2017-18) *
Residential Square Footage	$1.57 per Residential Square Foot	$1.25 per Residential Square Foot	$1.89 per Residential Square Foot
Taxable Non-Residential Square Footage	$1.57 per Non-Residential Square Foot	$1.25 per Non-Residential Square Foot	$1.89 per Non-Residential Square Foot

*** The Base Services Special Tax for each Tax Zone shown above shall be escalated as set forth in Section D.2.**

Step 1. Review the Certificate of Occupancy, Building Permit, Vertical DDA, condominium plan, Development Approval Documents, architectural drawings, information provided by the Port, Developer or Vertical Developer, and coordinate with the Review Authority to determine the Residential Square Footage and Non-Residential Square Footage anticipated within each building.

. *Step 2.* Using the information from Step 1:

- After consideration of the Tax Zone for the building and the Transition Year, multiply the applicable Base Services Special Tax from Table 3 for Residential Square Footage by the total Residential Square Footage within each building.

- Based on the Tax Zone in which the building is located and the Transition Year, multiply the applicable Base Services Special Tax from Table 3 for Taxable Non-Residential Square Footage by the total Taxable Non-Residential Square Footage expected in the building.

The Maximum Services Special Tax for the Parcel shall be the sum of the amounts calculated pursuant to this Step 2.

If additional structures are anticipated to be built on the Parcel as shown in the Development Approval Documents, the Administrator shall, regardless of the definitions set forth herein, categorize each building for which a Certificate of Occupancy has been issued as Developed Property, and any remaining buildings for which Certificates of Occupancy have not yet been issued shall not be subject to a Services Special Tax until a Certificate of Occupancy is issued for such remaining buildings. To determine the Services Special Tax for any such Parcel, the Administrator shall take the sum of the Services Special Taxes determined for each building.

3. Expected Taxable Property

Depending on the Tax Zone in which a Parcel of Expected Taxable Property is located, the Maximum Facilities Special Tax and, if applicable, Maximum Arts Building Special Tax assigned to the Parcel shall be the Expected Maximum Facilities Special Tax Revenues and, if applicable, Expected Maximum Arts Building Special Tax Revenues that were assigned to the Parcel (as determined by the Administrator) based on the Expected Land Uses prior to the Administrator determining that such Parcel had become Expected Taxable Property. In the Transition Year and each Fiscal Year thereafter, no Arts Building Special Tax shall be levied on Expected Taxable Property.

D. CHANGES TO THE MAXIMUM SPECIAL TAXES

1. Annual Escalation of Facilities Special Tax and Arts Building Special Tax

Beginning July 1, 2018 and each July 1 thereafter, each of the following amounts shall be increased by 2% of the amount in effect in the prior Fiscal Year: the Base Facilities Special Tax for each Tax Zone in Table 1; the Base Arts Building Special Tax for Tax Zone 2 in Table 2; the Expected Maximum Facilities Special Tax Revenues in Attachment 3, the Expected Maximum Arts Building Special Tax Revenues in Attachment 3, and the Maximum Facilities Special Tax and Maximum Arts Building Special Tax assigned to each Taxable Parcel.

2. Annual Escalation of Services Special Tax

Beginning July 1, 2018 and each July 1 thereafter, the Base Services Special Tax for each Tax Zone in Table 3 and the Maximum Services Special Tax assigned to each Taxable Parcel shall be adjusted by the Escalator.

3. Changes in Square Footage Category on a Parcel of Developed Property

If any Parcel that had been taxed as Developed Property in a prior Fiscal Year is rezoned or otherwise has a Land Use Change, the Administrator shall, separately for each of the Special Taxes, multiply the applicable Base Special Tax by the total Residential Square Footage and Taxable Non-Residential Square Footage on the Parcel after the Land Use Change; if the First Bond Sale has not yet occurred, the combined amount of the applicable Special Taxes shall be the Maximum Special Tax for the Parcel. If the First Bond Sale has taken place, the Administrator shall apply the remainder of this Section D.3.

If the Maximum Special Tax that would apply to the Parcel after the Land Use Change is greater than the Maximum Special Tax that applied to the Parcel prior to the Land Use Change, the Administrator shall increase the Maximum Special Tax for the Parcel to the amount calculated based on the Land Use Change. If the Maximum Special Tax after the Land Use Change is less than the Maximum Special Tax that applied prior to the Land Use Change, there shall be no change to the Maximum Special Tax for the Parcel. Under no circumstances shall the Maximum Special Tax on any Parcel of Developed Property be reduced, regardless of changes in Square Footage Category or Square Footage on the Parcel, including reductions in Square Footage that may occur due to demolition, fire, water damage, or acts of God.

4. Changes to Planning Parcels and Expected Land Uses

If, at any time prior to the First Bond Sale, the Developer or a Vertical Developer makes changes to the boundaries of the Planning Parcels or the Expected Land Uses within one or more Planning Parcels, the Administrator shall update the Expected Land Uses and Expected Maximum Facilities Special Tax Revenues and Expected Maximum Arts Building Special Tax Revenues, which will be reflected on an updated Attachment 3. In addition, the Administrator will request updated Attachments 1 and 2 from the Developer.

If, after the First Bond Sale, the Developer or a Vertical Developer proposes to make changes to the boundaries of the Planning Parcels or the Expected Land Uses within one or more Planning Parcels, the Administrator shall meet with the Port, Developer, and any affected Vertical Developers to review the proposed changes and evaluate the impact on the Expected Maximum Facilities Special Tax Revenues and Expected Maximum Arts Building Special Tax Revenues. If the Administrator determines that such changes will not reduce Required Coverage on Bonds that have been issued, the Port will decide whether to allow the proposed changes and corresponding redistribution of the Maximum Facilities Special Tax Revenues and Maximum Arts Building Special Tax Revenues. If such changes are permitted, the Administrator will update Attachment 3 and request updated Attachments 1 and 2 from the Developer. If the Administrator determines that the proposed changes will reduce Required Coverage on Bonds that have been issued, the Port will not permit the changes.

5. Reduction in Maximum Facilities Special Taxes Prior to First Bond Sale

Prior to the First Bond Sale, as set forth in the Financing Plan, the Port, Developer, and any affected Vertical Developer in Tax Zone 1 may agree to a proportional or disproportional reduction in the Base Facilities Special Tax. If the parties agree to such a reduction, the Port will direct the Administrator to use the reduced Base Facilities Special Tax for purposes of levying the taxes pursuant to this RMA, and such reduction shall be codified by recordation of an amended Notice of Special Tax Lien against all Taxable Parcels within the STD. The reduction shall be made without a vote of the qualified STD electors.

E. ANNEXATIONS

If, in any Fiscal Year, a property owner within the Future Annexation Area wants to annex property into the STD, the Administrator shall apply the following steps as part of the annexation proceedings:

Step 1. Working with Port staff, the Administrator shall determine the Expected Land Uses for the area to be annexed and the Tax Zone into which the property will be placed.

Step 2. The Administrator shall prepare or have prepared updated Attachments 1, 2, and 3 to reflect the annexed property and identify the revised Expected Land Uses, Expected Maximum Facilities Special Tax Revenues and Expected Maximum Arts Building Special Tax Revenues. After the annexation is complete, the application of this RMA shall be based on the adjusted Expected Land Uses and Maximum Facilities Special Tax Revenues and Maximum Arts Building Special Tax Revenues, as applicable, including the newly annexed property.

Step 3. The Administrator shall ensure that a Notice of Special Tax Lien is recorded against all Parcels that are annexed to the STD.

F. METHOD OF LEVY OF THE SPECIAL TAXES

1. *Facilities Special Tax*

Each Fiscal Year, the Administrator shall determine the Facilities Special Tax Requirement for the Fiscal Year, and the Facilities Special Tax shall be levied according to the steps outlined below:

a. In Any Fiscal Year in Which There is No Developer Private Agreement or Developer Public Agreement in Place

Step 1. In all Fiscal Years, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property regardless of debt service on Bonds (if any), and any Remainder Special Taxes collected shall be applied as set forth in the Indenture and the Financing Plan.

Step 2. After the First Bond Sale, if additional revenue is needed after Step 1 in order to meet the Facilities Special Tax Requirement after Capitalized Interest has been applied to reduce the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Expected Taxable Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Expected Taxable Property.

b. In Any Fiscal Year in Which There is Either or Both a Developer Private Agreement and/or a Developer Public Agreement in Place

Step 1. In all Fiscal Years, the Maximum Facilities Special Tax shall be levied on all Parcels of Developed Property regardless of debt service on Bonds (if any), and any Remainder Special Taxes collected shall be applied as set forth in the Indenture and the Financing Plan.

Step 2. After the First Bond Sale, but only if a Developer Private Agreement is in place, if additional revenue is needed after Step 1 in order to meet the Facilities Special Tax Requirement after Capitalized Interest has been applied to reduce the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Undeveloped Property that is not a Port-Owned Development Parcel, up to 100% of the Maximum Facilities Special Tax for each Parcel of Undeveloped Property that is not a Port-Owned Development Parcel for such Fiscal Year.

Step 3. After the First Bond Sale, but only if a Developer Public Agreement is in place, if additional revenue is needed after Step 2 in order to meet the Facilities Special Tax Requirement after Capitalized Interest has been applied to reduce the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Port-Owned Development Parcel, up to 100% of the Maximum Facilities Special Tax for each Port-Owned Development Parcel for such Fiscal Year.

Step 4: After the First Bond Sale, if additional revenue is needed after Step 3 in order to meet the Facilities Special Tax Requirement, the Facilities Special Tax shall be levied Proportionately on each Parcel of Expected Taxable Property, up to 100% of the Maximum Facilities Special Tax for each Parcel of Expected Taxable Property.

2. ***Arts Building Special Tax***

Step 1. Each Fiscal Year the Maximum Arts Building Special Tax shall be levied on each Taxable Parcel of Developed Property. Any Remainder Special Taxes collected shall be applied as set forth in the Financing Plan. The Arts Building Special Tax may not be levied on Undeveloped Property.

Step 2. After the First Bond Sale, if additional revenue is needed after Step 1 in order to meet the Arts Building Special Tax Requirement, the Arts Building Special Tax shall be levied Proportionately on each Parcel of Expected Taxable Property, up to 100% of the Maximum Arts Building Special Tax for each Parcel of Expected Taxable Property.

3. ***Services Special Tax***

Each Fiscal Year, the Administrator shall coordinate with the City and the Port to determine the Services Special Tax Requirement for the Fiscal Year. The Services Special Tax shall then be levied Proportionately on each Parcel of Developed Property, up to 100% of the Maximum Services Special Tax for each Parcel of Developed Property for such Fiscal Year until the amount levied is equal to the Services Special Tax Requirement. The Services Special Tax may not be levied on Undeveloped Property or Expected Taxable Property.

G. COLLECTION OF SPECIAL TAXES

Special Taxes shall be collected in the same manner and at the same time as ordinary ad valorem property taxes on the regular tax roll, provided, however, that the City may directly bill Special Taxes, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods as authorized by the CFD Law. The Board of Supervisors has ordered any Special Taxes to be levied on leasehold interests to be levied on the secured roll. The Special Tax bill for any Parcel subject to a leasehold interest will be sent to the same party that receives the possessory interest tax bill associated with the leasehold.

The Facilities Special Tax shall be levied and collected on a Taxable Parcel until the Fiscal Year that is the 120th Fiscal Year in which the Facilities Special Tax has been levied on the Taxable Parcel.

The Arts Building Special Tax shall be levied and collected until the earlier of: (i) the Transition Year, and (ii) the 120th Fiscal Year in which the Arts Building Special Tax has been levied on the Taxable Parcel.

The Services Special Tax shall be levied and collected in perpetuity.

H. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Taxes shall be levied on Affordable Housing Projects or Tax-Exempt Port Parcels unless such parcels are Expected Taxable Property.

Notwithstanding any other provision of this RMA, no Facilities Special Taxes or Arts Building Special Taxes shall be levied on Public Property unless all of the following conditions apply: (i) the First Bond Sale has occurred; (ii) based on reference to Attachment 3 (as may be updated as set forth herein), a Parcel was assigned Expected Land Uses; and (iii) if the Parcel were to be exempt from the Facilities Special Tax or Arts Building Special Tax, the Expected Maximum Facilities Special Tax Revenues or Expected Maximum Arts Building Special Tax Revenues would be reduced to a point at which the applicable Required Coverage on Bonds (if any) could not be maintained. If all of the above conditions apply, the Administrator can levy the Facilities Special Tax or Arts Building Special Tax on Public Property as needed to maintain Required Coverage.

Parcels of Public Property shall only be exempt from Facilities Special Taxes or Arts Building Special Taxes if: (a) the First Bond Sale has not occurred and the Port determines that it is in the best interest of the parties to exempt the Parcel(s); or (b) the First Bond Sale has occurred, the Port determines that it is in the best interest of the parties to exempt the Parcel(s), and such exemption will not reduce the Expected Maximum Facilities Special Tax Revenues or Expected Maximum Arts Building Special Tax Revenues to the point at which the applicable Required Coverage cannot be maintained. Unless an exemption is provided pursuant to (a) or (b) above, Parcels of Public Property shall be taxed as Developed Property, Undeveloped Property, or

Expected Taxable Property, as determined by the Port. Services Special Taxes will not be levied on Public Property.

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution or ordinance, as long as such interpretation, clarification, or revision does not materially affect the levy and collection of the Special Taxes and any security for any Bonds.

J. SPECIAL TAX APPEALS

Any taxpayer who wishes to challenge the accuracy of computation of the Special Taxes in any Fiscal Year may file an application with the Administrator. The Administrator, in consultation with the City Attorney, shall promptly review the taxpayer's application. If the Administrator concludes that the computation of the Special Taxes was not correct, the Administrator shall correct the Special Tax levy and, if applicable in any case, a refund shall be granted. If the Administrator concludes that the computation of the Special Taxes was correct, then such determination shall be final and conclusive, and the taxpayer shall have no appeal to the Board from the decision of the Administrator.

The filing of an application or an appeal shall not relieve the taxpayer of the obligation to pay the Special Taxes when due.

Nothing in this Section J shall be interpreted to allow a taxpayer to bring a claim that would otherwise be barred by applicable statutes of limitation set forth in the CFD Law or elsewhere in applicable law.

ATTACHMENT 1

CITY AND COUNTY OF SAN FRANCISCO
SPECIAL TAX DISTRICT NO. 2019-1
(PIER 70 CONDOMINIUMS)

IDENTIFICATION OF PLANNING PARCELS

ATTACHMENT 2

CITY AND COUNTY OF SAN FRANCISCO
SPECIAL TAX DISTRICT NO. 2019-1
(PIER 70 CONDOMINIUMS)

IDENTIFICATION OF TAX ZONES

ATTACHMENT 3

CITY AND COUNTY OF SAN FRANCISCO
SPECIAL TAX DISTRICT NO. 2019-1
(PIER 70 CONDOMINIUMS)

EXPECTED LAND USES, EXPECTED MAXIMUM FACILITIES SPECIAL TAX REVENUES, AND EXPECTED MAXIMUM ARTS BUILDING SPECIAL TAX REVENUES

Planning Parcel	Square Footage Category	Expected Square Footage	Expected Maximum Facilities Special Tax Revenues (FY 2017-18)*	Expected Maximum Arts Building Special Tax Revenues (FY 2017-18)
TAX ZONE 1				
Parcel K North	Residential Square Footage	209,000	$1,049,180	N/A
TAX ZONE 2				
Parcel C1C				
Parcel C2B				
Parcel D				
TOTAL	N/A			

EXHIBIT G

CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR

FINANCING PLAN AND

ACQUISITION AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO,
ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

64 PKN OWNER, LLC
A DELAWARE LIMITED LIABILITY COMPANY

PARCEL K NORTH

ELAINE FORBES, EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
VICTOR MAKRIS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER

EXHIBIT G

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EXHIBIT G

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ATTACHMENTS

FPAA Exhibit A:	Form of Payment Request
FPAA Exhibit A-1:	Form of Components Covered by Payment Request
FPAA Exhibit B:	Pier 70 Condo CFD RMA
FPAA Exhibit C:	First Addendum to FC Financing Plan
FPAA Schedule 1:	Intentionally Omitted
FPAA Schedule 2:	Pier 70 SUD Public Financing Districts
FPAA Schedule 3:	Pier 70 Financing Maps
FPAA Schedule 4:	Approved Arbitrators Pool

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FINANCING PLAN AND ACQUISITION AGREEMENT

This **FINANCING PLAN AND ACQUISITION AGREEMENT** (this "**Financing Plan**") implements, is a part of, and is attached as VDDA Exhibit I to and incorporated into the Vertical Disposition and Development Agreement (the "**VDDA**") between the City and County of San Francisco (including its agencies and departments, the "**City**"), acting by and through the San Francisco Port Commission (the "**Port**" or the "**Port Commission**"), and 64 PKN Owner, LLC, a Delaware limited liability company ("**Vertical Developer**") (each, a "**Party**").

Initially capitalized and other terms are defined in **Section 8** (Definitions) in this Financing Plan or in the VDDA. The VDDA contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents.

1. PROJECT OVERVIEW.

1.1. *Purpose and Term*.

(a) Purpose. This Financing Plan governs the Parties' respective rights and obligations with respect to the financing of PKN Horizontal Improvements to support development of Parcel K North and incorporates all requirements and limitations under the Project Requirements and attached implementing documents.

(b) Effective Date. This Financing Plan, as part of the VDDA, becomes effective on the Closing Date of the VDDA. Because certain financial obligations and rights will continue after Port has transferred its fee interest in Parcel K North under the VDDA, and potentially after the VDDA terminates, the Parties have agreed that, provided that Vertical Developer has satisfied all conditions for reimbursement of the PKN Horizontal Improvements, this Financing Plan will have an independent termination date and continue in effect until Vertical Developer has been reimbursed for all PKN Capital Costs of the PKN Horizontal Improvements, subject to **Section 2.1** (Commercially Reasonable Costs).

(c) Termination. This Financing Plan will terminate upon the earlier of:

(i) (i) Port's payment to Vertical Developer for the PKN Capital Costs of the PKN Horizontal Improvements and delivery of the Financing Plan Termination Notice under **Section 3.4(f)**; or

(ii) (ii) Termination of the VDDA under **VDDA Section 10** (Acquisition Defaults, Remedies, and Liquidated Damages).

1.2. *Project Description*.

(a) PKN Horizontal Improvements. The VDDA and this Financing Plan establishes the Parties' respective rights and obligations, including Project Requirements, that will apply to Vertical Developer's construction of the PKN Horizontal Improvements, which include construction of Michigan Street and the 20th Street Plaza.

(i) Vertical Developer has the obligation to complete construction of the PKN Horizontal Improvements in accordance with **VDDA Section 16.7**.

(ii) Vertical Developer will have the obligation to prepare PKN Improvement Plans under **VDDA Section 15.1** (Preparation of PKN Improvement Plans), which will be reviewed and approved by applicable City Agencies and the Port through submittal of Subdivision Maps, a Public Improvement Agreement and improvement plans in accordance with the Project Requirements.

(iii) Upon satisfaction or waiver of conditions precedent set forth in **VDDA Section 13.11** (Conditions to Commencement of Construction of the PKN Project), the

Port and Vertical Developer will enter into the License attached as **VDDA Exhibit C** for the PKN Improvement Area.

(iv) Vertical Developer will construct PKN Horizontal Improvements under **VDDA Section 15** (Construction of PKN Horizontal Improvements) and **Section 2** (Commercially Reasonable Costs and Contracting) below.

(v) Upon Acceptance by the City or the Port, as applicable, of PKN Horizontal Improvements under **VDDA Section 16.9** (Acceptance of PKN Horizontal Improvements), the License will terminate as to the premises underlying the PKN Horizontal Improvement, as provided for in the License and VDDA.

(b) Controlling Laws. Nothing in this Financing Plan affects the Parties' respective obligations to comply with the Project Requirements, as applicable to PKN Horizontal Improvements.

2. COMMERCIALLY REASONABLE COSTS AND CONTRACTING.

2.1. *Commercially Reasonable Costs*.

(a) Deemed Reasonableness. For work described in Vertical Developer's construction contracts and subcontracts with respect to any PKN Horizontal Improvements, not including change orders, any PKN Capital Cost that Vertical Developer incurs will be deemed commercially reasonable and to represent the fair market value price of a PKN Horizontal Improvement if: (i) the contract is secured through a competitive bid process with three or more qualified firms and awarded to the lowest responsible bidder; or (ii) the contract meets the requirements in **Section 2.1(c)** (Sole Source Contracts) with a value of $250,000 or less.

(b) Lowest Responsible Bidder. Vertical Developer or its General Contractor will award the construction contracts and subcontracts for the PKN Horizontal Improvements to the lowest responsible bidder after considering price and proposed schedule, with other factors such as the contractor's ability to contribute to Vertical Developer's obligations under the Project Requirements, financial strength, proposed project team, and any unique benefits offered to the project.

(c) Sole Source Contracts. If Vertical Developer or its General Contractor selects a contractor or subcontractor to perform a particular scope with a value of $250,000 or less as a sole source, Vertical Developer must validate the price by:

(i) providing the Port with an analysis of Soft Costs relative to the expected project budget;

(ii) providing the Port with an engineer's cost estimate for Hard Costs; or

(iii) demonstrating that the product or service is available from only one supplier in the Bay Area region.

(d) Port Validation. The Port may hire a third-party consultant to validate Vertical Developer's PKN Capital Costs for compliance with this Financing Plan. If the Parties disagree as to commercial reasonableness, they may agree to submit any disputes as to commercial reasonableness of PKN Capital Costs for resolution under **Section 7.5** (Nonbinding Arbitration).

(e) Satisfaction of CFD Law. The Parties have determined that the provisions of **Section 2.1** (Commercially Reasonable Costs) satisfy Government Code Section 53314.9.

2.2. *Guaranteed Maximum Price Contract*.

(a) Selection Process. Vertical Developer agrees to use a Guaranteed Maximum Price form of construction contract for PKN Horizontal Improvements and all

subcontractors will be selected in accordance with **Section 2.1(a)** (Deemed Reasonableness) and **Section 2.1(b)** (Lowest Responsible Bidder).

(b) Bid Requirements. In its bid, each subcontractor must identify the following, if applicable:

(i) preconstruction costs;

(ii) General Conditions as a fixed monthly cost for the staff and support necessary to complete the PKN Horizontal Improvements;

(iii) a construction management fee as a fixed percentage to be applied to the cost of PKN Horizontal Improvements;

(iv) a preliminary estimate for the cost of the PKN Horizontal Improvements; and

(v) any work on the PKN Horizontal Improvements the General Contractor intends to self-perform.

(c) Contract Negotiations.

(i) At the end of the preconstruction period, Vertical Developer will negotiate a GMP contract based on budgeting and estimating performed by the General Contractor in collaboration with various sub-trades at various design milestones during preconstruction.

(ii) Vertical Developer will have the option to proceed under the negotiated GMP contract terms or terminate the General Contractor's subcontractors and issue a new bid solicitation in accordance with **Section 2.1(a)** (Deemed Reasonableness) and **Section 2.1(b)** (Lowest Responsible Bidder). The selected General Contractor will be required to solicit competitive bids in accordance with **Section 2.1** (Commercially Reasonable Costs) for each sub-trade package including work it wishes to self-perform.

(iii) GMP contract terms will limit contingency to less than 15%.

(iv) Customary incentives to ensure performance actually paid to the General Contractor or subcontractors under the GMP contract will be considered a commercially reasonable cost of the contract up to a maximum of $100,000.

(d) General Contractor for Parcel K North Phase 1 as General Contractor. If Vertical Developer elects to use the same General Contractor for the first phase of the Vertical Project as its contractor to deliver the PKN Horizontal Improvements, the terms of its contract with the General Contractor for portions of work related to PKN Horizontal Improvements will be consistent with the requirements of this Section.

(e) Change Orders. From time to time, Vertical Developer and its General Contractor may agree on change orders to the underlying GMP contract or other construction contract or subcontract, which will occur during the course of construction of the applicable PKN Horizontal Improvements. At the earliest feasible opportunity, but in any event no later than the next regular meeting described in **VDDA Section 15.7** (Progress Meetings), Vertical Developer must share with the Port any agreed-upon change order or change orders that would cumulatively exceed a $250,000 threshold (a "**Material Change Order**"). With each reimbursement request under this Financing Plan, Vertical Developer will also submit documentation supporting the Material Change Order request and associated amendment or change order to the applicable GMP contract or other construction contract or subcontract, as well as documentation supporting change orders that do not rise to the level of a Material Change Order.

(f) Disputes. The Port will notify Vertical Developer within 14 days after Vertical Developer's submittal of documents described in **Section 2.1** (Commercially

Reasonable Costs) or **Section 2.2(e)** (Change Orders) if the Port considers any of the estimated or actual PKN Capital Costs to be commercially unreasonable based on the documentation provided and would not qualify as a PKN Capital Cost under this Financing Plan. If not resolved by consultation at a progress meeting under **VDDA Section 15.7** (Progress Meetings), the Parties may agree to submit the following disputes for resolution under **Section 7.5** (Nonbinding Arbitration):

(i) whether the challenged costs are commercially unreasonable; or

(ii) whether the challenged costs are outside the scope of approved Permit Sets.

2.3. ***Contracting Procedures***. Vertical Developer agrees to follow the contracting procedures described in this Section to negotiate one or more contracts for PKN Horizontal Improvements.

(a) Qualified Contractors. Vertical Developer will provide the Port with a list of the general contractors and subcontractors from which Vertical Developer intends to solicit bids for construction of PKN Horizontal Improvements prior to issuing bid packages. Port shall have the right, but not the obligation, to object to any general contractor or subcontractor in its sole discretion, provided, however, the Port preapproves Plant Construction, A&B Construction and Build Group as potential general contractors or subcontractors. If the Port objects to a general contractor or subcontractor, then Vertical Developer may provide Port with notice of a replacement general contractor or subcontractor subject to the same objection rights by Port, or submit the matter to the dispute resolution procedures of **Section 7.5** (Nonbinding Arbitration).

(b) Bid Package Requirements and Security. The bid package must include relevant Improvement Plans clearly defining the scope of work. The bid package will require the general contractor to guarantee performance and payment of the work, which may be provided through a subcontractor default insurance policy provided by the general contractor covering all enrolled subcontractors, or by requiring each subcontractor under subcontracts having a value of more than $100,000 to provide payment and performance bonds guaranteeing their work. Payment and performance bonds must be issued by a surety meeting the required standards under the Subdivision Code or **VDDA Section 15.6** (Security).

(c) Port Review of Competitive Offering. With at least 5 days' notice, before issuing its competitive solicitation for construction of the PKN Horizontal Improvements, Vertical Developer will provide the Chief Harbor Engineer the opportunity, but not the obligation, to review such competitive solicitation. If the Chief Harbor Engineer elects to provide comments, the Chief Harbor Engineer will provide comments on the competitive offering within 5 days of receipt of the competitive solicitation, which comments the Vertical Developer will incorporate in its offering in its reasonable discretion.

(d) Copy of Lowest Responsible Bid. For each PKN Horizontal Improvement, Vertical Developer will provide the Chief Harbor Engineer with a copy of its lowest responsible, line item bid, including the name of the contractor and each subcontractor no later than 5 days after executing the contract.

3. PAYMENT REQUESTS, PRIORITIES AND PAYMENTS.

3.1. ***Purchase and Sale***. Vertical Developer agrees to sell PKN Horizontal Improvements at their Acquisition Prices to the Acquiring Agencies, and the Port agrees to use PKN Payment Sources to pay Vertical Developer the Acquisition Prices of PKN Horizontal Improvements, as PKN Payment Sources become available as described in this Section.

3.2. ***Payment Requests***. The Port will reimburse Vertical Developer for its PKN Capital Costs in accordance with Approved Payment Requests that Vertical Developer will obtain in accordance with this Section. Vertical Developer may submit Payment Requests for its PKN Capital Costs for each PKN Horizontal Improvement in two phases: first, upon the

Substantial Completion of the PKN Horizontal Improvement and second, after Acceptance of the PKN Horizontal Improvement under **VDDA Section 16.5** (Port Commission Acceptance Action).

(a) Expected Payment Requests. The Parties anticipate that Vertical Developer will submit eight Payment Requests: (i) one Payment Request after Substantial Completion and another after Acceptance by Port of 20th Street Plaza; (ii) one Payment Request after Substantial Completion and another after Acceptance of Michigan Street ROW Surface Improvements; (iii) one Payment Request after Substantial Completion and another after Acceptance of the Michigan Street Sub-Surface Improvements; and (iv) one Payment Request after Substantial Completion and another after Acceptance of Michigan Street Plaza.

(b) Delivery to Chief Harbor Engineer. To initiate the process for authorizing payment, Vertical Developer must deliver to the Chief Harbor Engineer a Payment Request in the form of Exhibit A (Form of Payment Request) that contains all relevant information in an organized manner.

(c) Completeness Determination. The Chief Harbor Engineer will have 30 days after Vertical Developer delivers a Payment Request to review it for completeness. During the 30-day period, the Chief Harbor Engineer will have the right to request additional information and documentation reasonably necessary to complete the review, and to consult with the Acquiring Agency as to the Michigan Street Sub-Surface Improvements, and will have an additional 10 days after Vertical Developer delivers the requested information or documentation to make a completeness determination.

(d) Required Attachments. Required attachments to each Payment Request include:

(i) an inspection report signed by the authorized representative of each applicable Acquiring Agency validating that the PKN Horizontal Improvement for which payment is requested complies with Project Requirements;

(ii) acceptable forms of proof of payment for the PKN Capital Costs to be reimbursed by the payment;

(iii) other documents specified in Exhibit A (Form of Payment Request) to the extent applicable;

(iv) a completed copy of Exhibit A-1 (Work Covered by Payment Request) specifying each contractor, subcontractor, materialman, and other person with whom Vertical Developer or its contractor has entered into contracts with respect to any work included in the Payment Request;

(v) the contract amount for each contract; and

(vi) signed and acknowledged unconditional lien releases and waivers (in the required statutory form) from all contractors, subcontractors, materialmen, consultants, and other persons that Vertical Developer retained in connection with the work, in each instance unconditionally waiving all lien and stop notice rights with respect to the pending payment.

(e) Cost Allocation. Vertical Developer will clearly separate in its Payment Request costs that are eligible for reimbursement (e.g., trunk utility infrastructure in Michigan Street up to the lateral demarcation of Parcel K North and the 20th Street Plaza up to the building(s) on Parcel K North) and costs that are not eligible for reimbursement (e.g., connections from the building to the trunk infrastructure, which is a vertical cost). The Chief Harbor Engineer may notify the Vertical Developer of the Port's good faith reasonable objection to its proposal to allocate these costs within fifteen (15) days after the Vertical Developer delivers the Payment Request to the Port.

(f) Payment. The Chief Harbor Engineer will forward each Approved Payment Request promptly to the Port Finance Director. Each Approved Payment Request will authorize the use of PKN Payment Sources to pay the Acquisition Price of PKN Horizontal Improvements listed in the Approved Payment Request in accordance with this Financing Plan; provided, however, only 90% of the Acquisition Price of an Approved Payment Request for Substantial Completion of a PKN Horizontal Improvement shall be paid initially from the PKN Payment Sources. The remaining 10% and any additional PKN Capital Costs shall be paid from the PKN Payment Sources pursuant to the Approved Payment Request submitted following Acceptance of the PKN Horizontal Improvement. Except for Interest Costs accrued during any Delay Period, the Acquisition Price payable pursuant to each Approved Payment Request shall include the Interest Costs through the date of actual payment in full to the Developer.

3.3. ***Priorities***. Vertical Developer acknowledges and agrees that the Port will reimburse its PKN Capital Costs in the following order of priority, relative to all other costs associated with the SUD Project, as follows:

(a) After paying any annual debt service on Mello-Roos Bonds that are secured by Facilities Special Taxes levied on and collected from the Property, Facilities Special Taxes levied on and collected from the Property, will be used to deposit $4.3 million in the Michigan Street Reserve as a first priority use of these proceeds. In addition, the first priority use of a portion of the proceeds of Mello-Roos Bonds secured by Facilities Special Taxes levied on and collected from Zone 1 of the Pier 70 Condo CFD shall be to reimburse the PKN Capital Costs of the Michigan Street ROW and Michigan Street Plaza; the amount of such Mello-Roos Bond proceeds prioritized to reimburse such PKN Capital Costs shall be equal to $4.3 million less the amount actually on deposit in the Michigan Street Reserve or previously paid to the Vertical Developer to reimburse such PKN Capital Costs. While funds are on deposit in the Michigan Street Reserve and while such Mello-Roos Bond proceeds are prioritized to reimburse PKN Capital Costs, they shall not be considered Project Payment Sources pursuant to the First Addendum to FC Financing Plan. If such Mello-Roos Bonds are issued as tax-exempt bonds, the proceeds prioritized to reimburse such PKN Capital Costs shall become Project Payment Sources and applied in the same priority as set forth in Subsection 2.4(f) (Priorities for Payment) of the First Addendum to FC Financing Plan 30 months after the issuance date of such Mello-Roos Bonds (subject to an earlier release in the circumstances set forth below). If the PKN Capital Costs for the Michigan Street ROW and the Michigan Street Plaza exceed $4.3 million, the Port will use the next available Facilities Special Taxes levied on and collected from the Property that are not required to pay debt service on such Mello-Roos Bonds and the proceeds of any additional Mello-Roos Bonds that are secured by Facilities Special Taxes levied on and collected from Zone 1 of the Pier 70 Condo CFD to fund the remaining PKN Capital Costs of the Michigan Street ROW and the Michigan Street Plaza. The Port will pay Approved Payment Requests for Michigan Street from the Michigan Street Reserve and/or any applicable account established pursuant to an Indenture. The parties' best estimate of the timing of initial payments under this Section will be the fiscal year in which Parcel K North becomes Developed Property (as defined in the RMA) in Zone 1 of the Pier 70 Condo CFD or the City's issuance of Bonds secured by Facilities Special Taxes from the Pier 70 Condo CFD after the Property becomes Developed Property in Zone 1. When all of the PKN Capital Costs of the Michigan Street ROW and the Michigan Street Plaza have been reimbursed to the Vertical Developer, any funds remaining in the Michigan Street Reserve and any Mello-Roos Bond proceeds prioritized to reimburse the Vertical Developer for such PKN Capital Costs will become Project Payment Sources, and will be applied in the same priority as set forth in **Subsection 2.4(f)** (Priorities for Payment) of the First Addendum to FC Financing Plan.

(b) After paying any annual debt service on Tax Increment Bonds for Sub-Project Area G-2 that are secured, in whole or in part, by Residential Condo Project Tax Increment from the Property, Residential Condo Project Tax Increment collected from the Property will be used to deposit $3.5 million in the 20th Street Plaza Reserve as a first priority

use of these proceeds. In addition, the first priority use of a portion of the proceeds of Tax Increment Bonds issued for Sub-Project Area G-2 that are secured, in whole or in part, by the Residential Condo Project Tax Increment from the Property shall be to reimburse the PKN Capital Costs of the 20th Street Plaza; the amount of such Bond Proceeds prioritized to reimburse such PKN Capital Costs shall be equal to $3.5 million less the amount actually on deposit in the 20th Street Plaza Reserve or previously paid to the Vertical Developer to reimburse such PKN Capital Costs. If such Tax Increment Bonds are issued as tax-exempt bonds, the Bond proceeds prioritized to reimburse the PKN Capital Costs shall become Project Payment Sources and applied in the same priority as set forth in Subsection 2.4(f) (Priorities for Payment) of the First Addendum to FC Financing Plan 30 months after the issuance date of such Tax Increment Bonds (subject to an earlier release set forth below). If the 20th Street Plaza PKN Capital Costs exceed $3.4 million, the Port will use the next available Residential Condo Project Tax Increment collected from the Property that is not required to pay debt service on such Tax Increment Bonds and the proceeds of subsequently-issued Tax Increment Bonds that are secured, in whole or in part, by the Residential Condo Project Tax Increment from the Property to fund the remaining PKN Capital Costs of the 20th Street Plaza. While funds are on deposit in the 20th Street Plaza Reserve and while such Tax Increment Bond proceeds are prioritized to reimburse PKN Capital Costs, they shall not be considered Project Payment Sources pursuant to the First Addendum to FC Financing Plan. Funds deposited in the 20th Street Plaza Reserve will be traced by date of deposit, and it will be assumed that funds are spent on a First In, First Out (FIFO) basis. On the date that is 54 months after a fund deposit is made to the 20th Street Plaza Reserve, and to the extent not deemed expended under the FIFO rule, any such amounts deposited 54 months prior shall be released from the 20th Street Plaza Reserve, shall become a Project Payment Source, and shall be applied in the same priority as set forth in **Subsection 2.4(f)** (Priorities for Payment) of the First Addendum to FC Financing Plan. Funds disbursed from the 20th Street Plaza Reserve as a result of the Reserve Limitation will be replaced with Residential Condo Project Tax Increment collected from the Property until such time as the Vertical Developer has been fully reimbursed for PKN Capital Costs of the 20th Street Plaza. The foregoing process will be implemented on an ongoing basis so as to comply with the Reserve Limitation. The Port will pay Approved Payment Requests for the 20th Street Plaza from the 20th Street Plaza Reserve and/or any applicable account established pursuant to an Indenture. When all of the PKN Capital Costs of the 20th Street Plaza have been reimbursed to the PKN Developer, any funds remaining in the 20th Street Plaza Reserve and any Tax Increment Bond proceeds prioritized to reimburse the Vertical Developer for such PKN Capital Costs will become Project Payment Sources, and will be applied in the same priority as set forth in **Subsection 2.4(f)** (Priorities for Payment) of the First Addendum to FC Financing Plan.

3.4. ***Payments***.

(a) Availability of PKN Payment Sources. The Parties agree that PKN Payment Sources are expected to become available as follows:

(i) Facilities Special Taxes from Zone 1 of the Pier 70 Condo CFD is expected to be available in the City Fiscal Year after the 3rd anniversary of the Effective Date of the VDDA; and

(ii) Residential Condo Project Tax Increment is expected to be available in City Fiscal Year 2019-20.

(b) Initiation of Payment. As PKN Payment Sources become available, the Port Finance Director will provide written directions to each applicable Payment Agent for disbursement of funds to pay Approved Payment Requests. The Port Finance Director will review and annotate each Approved Payment Request, if not already specified, for:

(i) costs that are subject to restrictions or limitations under this Financing Plan or Governing Law and Policy; and

(ii) applicable priorities.

(c) Timing of Payment. As any PKN Payment Source becomes available, the Port Finance Director will identify the unpaid Approved Payment Requests for eligible uses of the available funds under Governing Law and Policy in the priority specified in **Section 3.3** (Priorities), then annotate those to be paid and direct payment under this Section within 90 days;

(d) Disbursement Directions. The Port Finance Director will direct disbursements by signing, dating, and delivering copies of the signed Approved Payment Requests as appropriate to the applicable Payment Agents, with copies to Vertical Developer, the CFD Agent, and the IFD Agent as applicable.

(e) Payment Authorization. Approved Payment Requests that the Port Finance Director delivers to any Payment Agent will authorize the Payment Agent to make monthly progress payments when additional PKN Payment Sources that it holds for disbursement in accordance with this Financing Plan become available. Each Payment Agent will document progress payments in accordance with the record-keeping requirements of its applicable Escrow Instructions, Special Fund Administration Agreement, or Indenture.

(f) Final Payment. After the Port Finance Director authorizes the Payment Agent to pay the final Approved Payment Request for all PKN Horizontal Improvements, she will deliver a Financing Plan Termination Notice to Vertical Developer which will become effective upon Vertical Developer's receipt of final payment in full for all PKN Horizontal Improvements.

3.5. ***Legal Limitations***. The following limitations will apply to the use of PKN Payment Sources.

(a) Fair Market Price. To comply with CFD Law Section 53313.51 and IFD Law Section 53395.8, this Financing Plan specifies Acquisition Prices for PKN Horizontal Improvements that the Parties agree represent a fair market price or method to determine a fair market price for PKN Horizontal Improvements to be acquired as set forth in this Financing Plan.

(b) Financing Temporarily Excused. The City will not be obligated to make payments under this Financing Plan:

(i) at any time during which there has been a Vertical Developer Default beyond all applicable notice and cure periods under the VDDA; or

(ii) until such time as PKN Payment Sources are available.

3.6. ***Payment Conditions***. Vertical Developer acknowledges that it must satisfy all conditions to payment in this Financing Plan before the Port will be obligated to approve a Payment Request for a PKN Horizontal Improvement.

3.7. ***Audit Rights***.

(a) Port Audit. The Port will have the right to conduct a Port Audit of Books and Records pertaining to PKN Capital Costs. Such audit will be conducted during normal business hours upon no less than 10 business days' notice at the principal place of business of Vertical Developer in San Francisco or other places where Books and Records are kept in San Francisco. Port will provide Vertical Developer with copies of any audit performed. The Port must notify Vertical Developer of the Port's intent to conduct a Port Audit no more than one year after the Port or other Acquiring Agency has finally accepted Michigan Street, the Sub-Surface Improvements, and the 20th Street Plaza.

(b) Port Audit Costs. The Port will bear its own audit costs unless a Port Audit reveals that Vertical Developer's PKN Capital Costs for any category claimed by

Developer for reimbursement under **Section 3** (Payment Requests) are overstated by 5% or more. In that case, Developer will be obligated to pay the costs of the Port Audit within 60 days.

(c) Overpayment. If the Port Audit reveals that Developer's PKN Capital Costs for any category claimed by Developer for reimbursement under **Section 3** (Payment Requests) are overstated by 5% or more, Developer will return 100% of the amount that the Port overpaid for PKN Capital Costs or dispute the Port's Audit within 60 days.

3.8. ***Books and Records***.

(a) Books and Records. Vertical Developer must make available in its San Francisco office Books and Records of all: (i) Vertical Developer funds spent on PKN Capital Costs, (ii) application of PKN Payment Sources to reimburse Vertical Developer's PKN Capital Costs, all under generally accepted accounting principles consistently applied, or in another format approved by the Port. Vertical Developer must maintain Books and Records for the longer of two years after the applicable date that the Port accepts a PKN Horizontal Improvement and the date on which any Port Audit is final or any litigation or dispute resolution proceeding relating to Vertical Developer's Books and Records or any Port Audit is finally concluded. After ten days' prior notice, Vertical Developer will make its Books and Records available to the Port during regular business hours.

(b) Until the PKN Capital Costs have been reimbursed in full to Vertical Developer, on or about August 1 each year after the Effective Date of the VDDA, the Port shall provide Vertical Developer with a statement of the amount of each PKN Payment Source received during the prior City Fiscal Year and the current balance of each PKN Payment Source.

4. FINANCING OVERVIEW.

4.1. ***Overview of Financing Districts***. As part of the SUD Project approvals, the Board of Supervisors indicated its intent to form the financing districts outlined in Schedule 2 with anticipated boundaries as shown in the Public Financing Maps attached as Schedule 3.

(a) Pier 70 Condo CFD. The Pier 70 Condo CFD at formation will include Parcel K North and Parcels C1C, C2B, and D in the SUD Project, which the Port will sell for development as Residential Condo Projects, and include a Facilities Special Tax and a Services Special Tax, each as defined in the Pier 70 Condo CFD RMA. The Pier 70 Condo CFD will consist of two zones and a Future Annexation Area. Zone 1 will consist of Parcel K North. Zone 2 will include all Residential Condo Projects in the 28 Acre Site. The Future Annexation Area will consist of Parcel E1, Parcel F, Parcel G, Parcel H1, Parcel H2, Parcel C1A, and could include Parcel E4 or Parcel K South, or both, if the parcels cease to be used for the purposes specified in the financing plan for the 28-Acre Site Project.

(i) Facilities Special Taxes from both Zones in the Pier 70 Condo CFD (except as indicated below) will be applied to the following:

(1) Michigan Street, including Surface and Sub-Surface Improvements; and

(2) Other costs associated with the SUD Project, as more fully described in the financing plan for the 28-Acre Site Project.

(ii) Services Special Taxes from Zone 1 of the Pier 70 Condo CFD will pay the Ongoing Maintenance Costs of:

(1) The 20th Street Plaza;

(2) Michigan Street, except for Sub-Surface Improvements;

(3) (3) other Public Spaces outside of the FC Project Area and the 20th Street CFD;

(4) other Public ROWs in Pier 70 north of 20th Street and outside of the 20th Street CFD; and

(5) Shoreline Protection Facilities.

(b) Infrastructure Financing District Sub-Project Area G-2. Sub-Project Area G-2 will correspond to Phase 1 of the SUD Project and development of Parcel K North. Under Appendix G-2, the IFD will be authorized to pledge and use Project Tax Increment to pay eligible capital costs of the SUD Project, including the costs of the 20th Street Plaza.

4.2. ***Cost Estimates***. The estimated PKN Capital Costs of the Michigan Street PKN Horizontal Improvements and the 20th Street Plaza PKN Horizontal Improvements are $4,300,000 and $3,500,000, respectively.

4.3. ***PKN Payment Sources***. This section provides an overview of the PKN Payment Sources to reimburse Vertical Developer its PKN Capital Costs and the treatment of those sources, subject to more detailed conditions in this Financing Plan.

(a) General Principle. Governing Law and Policy will prevail over any conflict with this Financing Plan relating to PKN Payment Sources.

(b) PKN Payment Sources. PKN Payment Sources will be limited to:

(i) For Michigan Street, Facilities Special Taxes from Zone 1 of the Pier 70 Condo CFD and the proceeds from Mello-Roos Bonds secured by Facilities Special Taxes from Zone 1 of the Pier 70 Condo CFD; and

(ii) For the 20th Street Plaza, Residential Condo Project Tax Increment and the proceeds of Tax Increment Bonds that are secured by Residential Condo Project Tax Increment collected from the Property.

4.4. ***Limitation on Sources***.

(a) Vertical Developer acknowledges that none of the following is a source to pay PKN Capital Costs under any circumstances:

(i) City General Fund;

(ii) Port Harbor Fund;

(iii) Facilities Special Taxes collected from outside of the Pier 70 Condo CFD;

(iv) Port Tax Increment in the Special Fund Trust Account holding Port Tax Increment;

(v) Project Tax Increment other than Residential Condo Project Tax Increment.

(vi) Funding from Historic Pier 70, LLC or FC Pier 70 LLC or any of their affiliates.

(b) No Payment Guarantee. The Port makes no warranty, express or implied, that PKN Payment Sources will be sufficient to pay the Acquisition Prices of the PKN Horizontal Improvements.

(c) Deposits of PKN Payment Sources.

(i) Bond Proceeds. The proceeds of any Bonds will be deposited, held, invested, reinvested, and disbursed as provided in the respective Indenture. The portion of Bond proceeds that is used to fund reserves for debt service, to capitalize interest on the Bonds, and to pay costs of issuance and administration will not be available to make payments to Vertical Developer.

(ii) Tax Revenues. Facilities Special Taxes and Residential Condo Project Tax Increment will be deposited in the Special Fund Trust Account subject to a Special Fund Administration Agreement and held and disbursed as specified therein and in accordance with this Financing Plan.

(iii) Investment Policy. Vertical Developer acknowledges that Port, in its proprietary capacity and as CFD Agent and IFD Agent, will direct the investment of PKN Payment Sources in accordance with the Port's and the City's investment policies, all Applicable Laws, and any applicable Indentures. The Port will have no responsibility to Vertical Developer with respect to any investment of PKN Payment Sources before their use under this Financing Plan, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment so long as the investments were made in accordance with all Applicable Laws and any applicable Indenture, even if a loss diminishes the amount of available PKN Payment Sources.

4.5. ***Due Diligence Related to Public Financing***. The Parties agree as follows.

(a) Compliance with Law. Before spending any Public Financing Sources, the Port and the City will consult with the City's Bond Counsel to confirm that the expenditure is authorized under Governing Law and Policy.

(b) Record-Keeping. Consistent with **Section 3.8** (Books and Records), Vertical Developer will keep appropriate records of expenditures related to the PKN Horizontal Improvements that it expects to be reimbursed from PKN Payment Sources to assist with Bond Counsel's review.

5. MELLO-ROOS TAXES.

5.1. ***City Policy***. Vertical Developer acknowledges that the CFD Goals will prevail in the event of any inconsistency with this Financing Plan, except to the extent that the Board of Supervisors waives any provision of the CFD Goals or Governing Law and Policy in the CFD Formation Proceedings or otherwise.

5.2. ***Delegation of Authority to Vote in CFD Formation Proceedings***. If the City has not formed the Pier 70 Condo CFD by the Close of Escrow, Vertical Developer will delegate its authority to vote in CFD Formation Proceedings to Port as provided for in the VDDA.

5.3. ***Notice of Contract to Maintain Levy of CFD Financing***. Under **Section 3** of article XIIIC of the California Constitution, under certain circumstances, voters may vote to reduce or repeal the levy of special taxes in a community facilities district. **Section 9** of article I of the California Constitution, however, prohibits the passage of a law resulting in an impairment of contract.

(a) Notice. This Section provides notice of the following:

(i) The VDDA and this Financing Plan are contracts between the Port and Vertical Developer.

(ii) This Financing Plan:

(1) describes an integrated program to finance the Acquisition Price of PKN Horizontal Improvements; and

(2) is an essential part of the consideration for the VDDA.

(iii) Any reduction in the City's ability to levy and collect Mello-Roos Taxes on behalf of the Pier 70 Condo CFD for purposes specified in this Financing Plan would materially impair Vertical Developer's and the Port's contractual rights and obligations under the VDDA and this Financing Plan.

(b) Intent to Maintain Contract. To further preserve the contractual rights and obligations under this Financing Plan, the Port agrees that, until the Port fully reimburses Vertical Developer for its PKN Capital Costs, neither the Port nor the City will initiate or conduct proceedings under CFD Law to reduce the rates of Mello-Roos Taxes except by agreement with Vertical Developer or if legally compelled to do so (e.g., by a final judgment).

5.4. RMA Generally.

(a) Cooperation. The Port and Horizontal Developer are working cooperatively to develop an RMA for the Pier 70 Condo CFD that is consistent with this Financing Plan. A draft of the Pier 70 Condo CFD RMA is shown in Exhibit B. Vertical Developer acknowledges and agrees that it may not contest the formation of the Pier 70 Condo CFD as long as Pier 70 Condo CFD, including the Pier 70 Condo CFD RMA, are not modified in any manner that would increase the amount of the Facilities Special Taxes or Services Special Taxes that may be levied on the Property, or any portion thereof, or accelerate the timing of the levy of the Facilities Special Taxes or Services Special Taxes on the Property or the apportionment of the Facilities Special Taxes or Services Special Taxes to the Property. The Port acknowledges and agrees that the Michigan Street ROW Surface Improvements, the Michigan Street Sub-Surface Improvements, and the Michigan Street Plaza shall be eligible facilities of the Pier 70 Condo CFD. The Port also acknowledges and agrees that Vertical Developer shall be provided reasonably adequate prior written notice and an opportunity to comment on all subsequent changes to the Pier 70 Condo CFD RMA. Vertical Developer acknowledges that RMA term sheet provides that Tax Zone 1 only includes Developed Property and Undeveloped Property. The Port agrees that Facilities Special Taxes shall not be levied on the Property while it is classified as "Undeveloped Property" pursuant to the Pier 70 Condo CFD RMA attached hereto as Exhibit B unless the Vertical Developer and Horizontal Developer have entered into a written agreement pursuant to which the Horizontal Developer has agreed to reimburse the Vertical Developer for, or to pay directly, any Facilities Special Tax levy on the Property before it is classified as "Developed Property" pursuant to such Pier 70 Condo CFD RMA.

(b) Delinquencies. The Pier 70 Condo CFD RMA will include a provision that limits the CFD's authority to increase the levy of Mello-Roos Taxes on any Taxable Parcel to make up for the delinquencies of other taxpayers in the CFD. The CFD will not be permitted to increase the levy of Mello-Roos Taxes on the Property in any fiscal year as the result of the delinquencies or defaults of any other property owners in the CFD by more than 10% above the amount that would have been levied in that fiscal year in the absence of such delinquencies or defaults, which levy shall not in any event exceed the maximum Mello-Roos Taxes applicable to the Property.

(c) Annual Levy. After formation of the Pier 70 Condo CFD, Vertical Developer will consult with the CFD Administrator as needed to determine in each City Fiscal Year what development has occurred in the prior City Fiscal Year.

(d) Material Changes to CFD Law. If CFD Law changes to make Mello-Roos Taxes unavailable or severely impair the uses authorized by this Financing Plan, the Port and Vertical Developer in consultation with the City will negotiate in good faith to establish a substitute financing program equivalent in nature and function as allowed under then-current Governing Law and Policy.

(e) No Prepayment. The Pier 70 Condo CFD RMA does not include provisions for the prepayment of Facilities Special Taxes. Vertical Developer will disclose this limitation to buyers of Condominium Units on Parcel K North in compliance with Governing Law and Policy.

5.5. ***Services Special Taxes***.

(a) Authorized Costs. The Pier 70 Condo CFD RMA will authorize the City to levy Services Special Taxes annually in the amounts needed to provide a perpetual pay-as-you-go source to fund Ongoing Maintenance Costs of the 20th Street Plaza, Michigan Street and 20th Street Maintained Facilities. Vertical Developer acknowledges that Ongoing Maintenance Costs do not include the costs of maintaining private open space.

(b) No Prepayment. The Pier 70 Condo CFD RMA will provide that taxpayers will not be allowed to prepay Services Special Taxes. Vertical Developer will disclose this limitation to buyers of Condominium Units on Parcel K North in compliance with Governing Law and Policy.

(c) Covenants.

(i) The Port has informed Vertical Developer that, because of limited Port revenue sources, the Port would not enter into this Financing Plan without ensuring an ongoing funding source for Ongoing Maintenance Costs.

(ii) Vertical Developer agrees to obtain Port or City, if applicable, approval of and establish maintenance covenants to be recorded in the Official Records before the Port or the City conveys any Taxable Parcel in any CFD formed in the SUD to Vertical Developer. Maintenance covenants will run with the land and be binding on successors in perpetuity.

(iii) The maintenance covenants will specify that the City, including the Port, is an intended beneficiary and obligate every owner of a Taxable Parcel to pay an amount equivalent to Services Special Taxes that would have been levied if the CFDs or their taxing powers are ever eliminated or reduced for any reason, including any vote of the qualified electors in the CFD.

5.6. ***Validation***. Vertical Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the Pier 70 Condo CFD and matters authorized under the Pier 70 Condo CFD RMA or any City or Port judicial validation actions relating to the formation of the Sub-Project Areas and matters authorized under Appendix G-2.

6. DEFAULTS AND REMEDIES.

6.1. ***Default by Vertical Developer***. A Vertical Developer Default beyond all applicable notice and cure periods under the VDDA will be a default under this Financing Plan, entitling Port to certain remedies related to this Financing Agreement, as further specified in the VDDA. In addition, it shall be a default under this Financing Plan if Vertical Developer fails to perform any other obligation required to be performed by Vertical Developer under this Financing Plan, and such failure continues beyond the period of time for cure thereof or the expiration of any grace period specified in this Financing Plan therefor, or if no such cure or grace period is specified, within thirty (30) days after Vertical Developer's receipt of notice of such failure to perform from Port, or in the case of a default that is curable but is not susceptible of cure within thirty (30) days, Vertical Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed one hundred and twenty (120) days.

6.2. ***Default by Port***. Provided that PKN Payment Sources are available to the Port, it will constitute a "Port Default" under this Financing Plan, if after the Closing Date, the Port Commission or other Acquiring Agency has accepted one or more PKN Horizontal Improvements and Port fails to make payments for Approved Payment Requests under **Section 3.4** (Payments) within sixty (60) days after Port's receipt of notice of such a default from Vertical Developer.

6.3. ***Port Remedies for Vertical Developer Default***.

(a) General. During the continuance of a default by the Vertical Developer beyond all applicable notice and cure periods under this Financing Plan or the VDDA, Port will have all rights and remedies available at law or in equity, including the right to institute such proceedings as may be necessary, including action to cure the default or to seek specific performance or other injunctive relief, and the remedies set forth in the Special Provisions.

(b) Failure to Pay. In the event of Vertical Developer Default under **VDDA Section 19.1(h)** (Failure to Pay), in addition to all other available remedies, Port will not be obligated to reimburse Vertical Developer for its outstanding PKN Capital Costs as provided for in this Financing Plan until Vertical Developer has paid all taxes and assessments (including CFD and IFD assessments), including associated fines and penalties.

(c) Failure to Complete PKN Horizontal Improvements in Accordance with Schedule of Performance. In the event of a Vertical Developer Default pursuant to **VDDA Section 19.1(d)** (Failure to Complete PKN Horizontal Improvements in Accordance with Schedule of Performance), in addition to all other available remedies, Port will not reimburse Vertical Developer under this Financing Plan for its Interest Costs accrued during the Delay Period.

(d) Abandonment. In the event of a Vertical Developer Default under **VDDA Section 19.1(j)** (Abandonment), in addition to all other available remedies, Port shall have no obligation to pay the PKN Capital Costs incurred by Vertical Developer.

(e) Defective or Nonconforming Work. In the event of a Vertical Developer Default under **VDDA Section 19.1(k)** (Defective or Nonconforming Work), in addition to all other available remedies, Port will not be obligated to reimburse Vertical Developer for its outstanding PKN Capital Costs as provided for in this Financing Plan until the defect or nonconformity is corrected to the Acquiring Agency's satisfaction..

6.4. ***Vertical Developer's Remedies for Port Default***. In the event of a Port Default after the Closing Date, Vertical Developer's remedy is limited to an action for specific performance. Port will not be liable to Vertical Developer for any monetary damages whether caused by a Port Default and in no event will Port be liable for any actual, consequential, incidental or punitive damages.

6.5. ***Limitation on Port Liability***. The provisions of **Section 9.7** shall apply as to Port liability.

6.6. ***No Implied Waivers***. No waiver made by a waiving Party with respect to the performance or manner or time thereof (including an extension of time for performance) of any obligations of another Party, or of any condition to the waiving Party's own obligations, will be considered a waiver of the waiving Party's rights with respect to any obligation of another Party or any condition to the waiving Party's own obligations beyond those expressly waived in writing.

6.7. ***Limitation on Personal Liability***. No natural person, including any commissioner, member, supervisor, officer, director, employee, representative, attorney, shareholder, limited partner, heir, legal representative, or member of a Party, will be personally liable to another Party in the event of any default or for any amount that may become due to a Party under this Agreement, provided the foregoing will not (i) limit any liabilities that exist under a security instrument in favor of the Port or that exist under applicable law, or (ii) release obligations of a Person that otherwise has liability for such obligations, such as the general partner of a partnership that, itself, has liability for the obligation.

6.8. ***Rights and Remedies Cumulative***. Except as expressly limited by this Financing Plan, the Parties' respective rights and remedies with respect to a default are cumulative. An Aggrieved Party's exercise of any one or more of its remedies for a default by the Breaching

Party will not preclude its exercise, at the same or different times, of any of its other remedies. Each Party acknowledges its intent to limit its remedies for a default by the other Party to those specified in this Financing Plan.

7. RESOLUTION OF CERTAIN DISPUTES.

7.1. ***Nonbinding Arbitration Scope***. The Parties may agree to submit disputes specifically enumerated under this Financing Plan as being subject to nonbinding arbitration. The Parties agree that nonbinding arbitration is limited to this Financing Plan and does not apply to disputes under the VDDA. No Party can compel another Party to arbitrate a decision that a Party is entitled to make in its sole discretion.

7.2. ***Arbitrators***.

(a) Arbitrators Pool. The Parties may agree to submit certain disputes to Arbitrators on the approved Arbitrators Pool attached as Schedule 4 and have agreed that Arbitrators on the list meet the qualifications under this Subsection. To be qualified, an Arbitrator must have at least 10 years' experience in the San Francisco Bay Area in a professional capacity handling issues arising from engineering, cost-estimating, and complex financial accounting.

(b) Changes.

(i) The Parties will review the approved Arbitrators Pool periodically to determine each Arbitrator's continued availability and willingness to serve. Either Party may propose to change the approved Arbitrators Pool by notice to the other Party, together with documentation supporting the proposed change, such as a proposed new Arbitrator's qualifications or reasons to remove an Arbitrator from the approved Arbitrators Pool.

(ii) The other Party will have 15 business days to respond. Failure to respond will be deemed consent if the notice prominently stated that the other Party's failure to respond within 15 business days will be deemed consent.

(iii) If the other Party objects, the Parties will meet and confer under **Subsection 7.3(a)** (Good Faith Efforts) and, if necessary, discuss whether to resolve the dispute by nonbinding arbitration under **Subsection 7.5** (Nonbinding Arbitration Process).

7.3. ***Meet and Confer Requirement***.

(a) Good Faith Efforts. Before resorting to any dispute resolution procedure under **Subsection 7.5** (Nonbinding Arbitration Process), or initiating a judicial action, each Party agrees to make good faith efforts to resolve the dispute as follows.

(i) Any Party may initiate a meet-and-confer effort by giving notice under procedures for progress meetings under **VDDA Section 15.9** (Progress Meetings). Within five business days after the initiating Disputing Party's request to confer regarding an identified matter, decision-making representatives of each Disputing Party will meet in a good faith effort to resolve the dispute.

(ii) If the Disputing Parties are unable to resolve the dispute at the meeting (or any longer time to which each Disputing Party agrees in its sole discretion), the following options will apply.

(1) The Parties may agree to nonbinding arbitration under **Subsection 7.5** (Nonbinding Arbitration Process) as to matters specifically enumerated in this Financing Plan as being subject to nonbinding arbitration.

(2) The Parties, each in its sole discretion, may mutually agree to submit any other matters to arbitration under this Section.

(iii) If the Disputing Parties do not agree to arbitration, or the dispute is not resolved by nonbinding arbitration, any Disputing Party may seek to enforce its rights and remedies at law or in equity.

(b) No Prejudice. The dispute resolution procedures in this Section will not delay or otherwise prejudice a Party's right to give notice of an alleged default under **VDDA Section 19** (Defaults; Remedies) or under this Financing Plan.

7.4. ***General Nonbinding Arbitration Procedures***.

(a) Notice. A Disputing Party may initiate nonbinding arbitration by providing a notice to the other Disputing Party, specifying with particularity both the nature of the dispute between the Disputing Parties and the initiating Disputing Party's demand to resolve the dispute. Once all Disputing Parties have agreed to nonbinding arbitration, neither Disputing Party may initiate or continue to prosecute a judicial action, except to comply with court rules, during the pendency of an arbitration proceeding.

(b) Selection of Arbitrator. The Disputing Parties will meet to designate the Arbitrator from the approved Arbitrators Pool within 10 business days after the effective date of the arbitration notice. If the designated Arbitrator is not available to meet the time requirements for the proceeding, the Disputing Parties will designate another Arbitrator on the approved Arbitrators Pool. If the Disputing Parties are unable to reach a mutual agreement regarding which Arbitrator to designate, the first Arbitrator's name on the list with availability will be the designated Arbitrator. If none of the Arbitrators listed in the Arbitrator's Pool is able or willing to hear a dispute, the Disputing Parties will agree on the selection of another Arbitrator meeting the qualifications in **Subsection 7.2(a)** (Arbitrators Pool) to serve for the purposes of that dispute. If the Disputing Parties are unable to agree upon an Arbitrator not in the Arbitrator's Pool, the Disputing Parties shall request that the Arbitrator first designated by the Disputing Parties select an Arbitrator. If the first designated Arbitrator is not able or willing to select an Arbitrator, the Disputing Parties shall ask the next name on the Arbitrator's Pool list to select the Arbitrator (and so on until an Arbitrator is selected). If none of the Arbitrators listed in the Arbitrator's Pool are able or willing to select an Arbitrator, then either Disputing Party may initiate an action in the Superior Court of the State of California for the County of San Francisco for the limited purpose of seeking the appointment of an Arbitrator. Each Disputing Party initially will advance 50% of the required arbitration fee and all Disputing Parties shall split equally all Arbitrator fees.

(c) Arbitrator's Authority. The Arbitrator will be authorized to:

(i) render an advisory decision for the matter on the written submittals; and

(ii) hold an evidentiary hearing on reasonable prior notice to the Disputing Parties;

(iii) make a recommendation against a Disputing Party that does not deliver a brief or appear at the hearing.

(d) Limits on Arbitrator's Authority. The Arbitrator will have no authority to:

(i) make a recommendation or decision on any matter that is not specifically identified in this Financing Plan as being subject to nonbinding arbitration unless the Disputing Parties have agreed to submit the matter to the Arbitrator;

(ii) make a recommendation or decision on any matter that was not specified in the initiating Disputing Party's notice;

(iii) make a recommendation or decision to add to, remove from, disregard, modify, or otherwise alter this Financing Plan or any other agreement between the

Disputing Parties regarding PKN Construction Obligations or the VDDA related to Parcel K North;

(iv) negotiate new agreements or provisions between the Disputing Parties; or

(v) award damages of any kind or award Attorneys' Fees and Costs or arbitration fees; or

(vi) recommend or decide any form of equitable relief.

(e) Service of Documents. In all dispute resolution proceedings under this Section, all agreements, submittals, and decisions must be in writing, and each Disputing Party must serve copies of any documents submitted to any Arbitrator simultaneously to all other Disputing Parties.

(f) Ex Parte Communications. No Disputing Party or any of its Agents may engage in ex parte communications with the Arbitrator with regard to any pending arbitration proceeding. A Disputing Party may write to the Arbitrator concerning procedural matters such as scheduling if it delivers a copy simultaneously to the other Disputing Parties.

7.5. ***Nonbinding Arbitration Process***.

(a) The Disputing Parties may agree to submit disputes to nonbinding arbitration within 10 business days after the meet-and-confer period under **Section 7.3** (Meet and Confer Requirement) expires. The Disputing Parties may submit a joint statement of the dispute and a proposed discovery, briefing, and hearing schedule to the Arbitrator. Otherwise, each Disputing Party may submit to the Arbitrator a short statement of the dispute and a proposed discovery, briefing, and hearing schedule, and the Arbitrator will specify the schedule for the proceeding. The Disputing Parties may agree to supplement, but not override, the nonbinding arbitration process under this Subsection by procedures applicable to commercial nonbinding arbitration or alternative dispute resolution providers in the Bay Area.

(b) The Arbitrator will render an advisory decision on any dispute subject to nonbinding arbitration under this Section. The Disputing Parties must provide the Arbitrator with briefs, not to exceed 10 double-spaced pages, on their respective positions. The Arbitrator must issue an advisory decision within five days after the last submittal.

(c) Within 20 business days after the start of nonbinding arbitration pursuant to this Section, the Arbitrator will conduct a preliminary hearing, either by telephone or personal appearance at the Arbitrator's option. At the preliminary hearing, the Arbitrator will establish discovery and briefing schedules and relevant dates, including a hearing date. In resolving discovery issues, the Arbitrator must consider expediency, cost effectiveness, fairness, and the needs of the Disputing Parties for adequate information in reference to the dispute. The Disputing Parties will make good faith efforts to prepare a joint record of evidentiary documents for the proceeding.

(d) The Disputing Parties may agree to retain one or more consultants to assist the Arbitrator at the Arbitrator's request. In the request, the Arbitrator must provide to all Disputing Parties an explanation of the need for each proposed consultant, the consultant's identity and relevant qualifications, hourly rate, the estimated costs of the service, and a proposed cap on the consultant's cost. All Disputing Parties must approve each consultant's retention, the cost cap, and each Parties' allocated share of the consultant's cost.

(e) The evidentiary hearing must be scheduled to begin within 60 days and be completed within 80 days after the preliminary hearing, unless the Arbitrator extends the date with the Disputing Parties' consent. The Arbitrator must issue an advisory decision, specifying the reasons for the decision, within 20 days after the hearing. Each Disputing Party will give due consideration to the Arbitrator's decision before deciding to pursue further legal action.

(f) No advisory decision will have any res judicata or collateral estoppel effect in any other arbitration conducted under this Section or in any other action.

8. DEFINITIONS.

For the purposes of this Financing Plan, initially capitalized terms will have the meanings ascribed to them in this Section:

"**20th Street CFD**" means a CFD that the City has agreed to establish to finance Ongoing Maintenance Costs of 20th Street Maintained Facilities.

"**20th Street Maintained Facilities**" means the following improvements, for which Ongoing Maintenance Costs will be paid by Services Special Taxes levied on Taxable Parcels in the 20th Street CFD:

(i) Public Spaces in the 20th Street CFD;

(ii) Public ROWs in the 20th Street CFD;

(iii) other Public Spaces outside of the FC Project Area and the Illinois Street Parcels;

(iv) other Public ROWs in Pier 70 north of 20th Street and outside of the Illinois Street Parcels; and

(v) costs for Shoreline Protection Facilities north of 20th Street.

"**20th Street Plaza**" is defined in VDDA Recital F.

"**20th Street Plaza Reserve**" means a reserve account for the deposit of Residential Condo Project Tax Increment collected from Parcel K North to pay the PKN Capital Costs of the 20th Street Plaza. Amounts in the 20th Street Plaza Reserve do not constitute Project Payment Sources until the PKN Developer has been reimbursed for its PKN Capital Costs of the 20th Street Plaza.

"**28-Acre Site**" is defined in VDDA Recital A.

"**28-Acre Site Project**" is defined in VDDA Recital A.

"**Acceptance**" means with respect to each PKN Horizontal Improvement, acceptance in accordance with VDDA Section 16.

"**Acquiring Agency**" means the City Agency (the Port, San Francisco Public Utilities Commission, or Public Works) that will acquire PKN Horizontal Improvements in accordance with the Transaction Documents and the Subdivision Code.

"**Acquisition Price**" means the amount that the Port will pay Vertical Developer on behalf of Acquiring Agencies to purchase PKN Horizontal Improvements under this Financing Plan, which will equal the PKN Capital Costs.

"**Allocated Tax Increment**" means the portion of the tax increment that the City collects from the IFD that the City has agreed to allocate to the financing district for uses approved in the related formation proceedings or financing plans.

"**Appendix G-2**" means the Project-specific infrastructure financing plan for Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4 approved by the Board of Supervisors by Ordinance No. 220-18, passed on September 18, 2018.

"**Approved Payment Request**" means a Payment Request in the form of Exhibit A for PKN Capital Costs of PKN Horizontal Improvements that the Chief Harbor Engineer has approved under **Section 3.2** (Payment Requests).

"**Attorneys' Fees and Costs**" is defined in **VDDA Section 26**.

"**Bonds**" means bonds or other forms of indebtedness secured and payable by one or more of Facilities Special Taxes or Project Tax Increment issued on behalf of any financing district.

"**Bond Counsel**" means an attorney or firm of attorneys with experience in public finance matters that has been engaged by the City.

"**Books and Records**" means books and records that Vertical Developer will prepare and maintain under **Section 3.8** (Books and Records).

"**CFD**" is an acronym for Community Facilities District and for purposes of this Financing Plan shall also mean a special tax district established pursuant to the CFD law. References to a CFD also mean the district itself and any area within it designated as a Zone, if required by the context.

"**CFD Administrative Costs**" means the proportionate share of reasonable costs that the Port, as CFD Agent for the Pier 70 Condo CFD, actually incurs and pays for:

(i) services of any Indenture Trustee (including its counsel) for any Bonds that the City issues for any CFD described in this Financing Plan;

(ii) marketing or remarketing Bonds; and

(iii) all other reasonable administrative services provided by the Port, any CFD Administrator, the City, the Special Fund Trustee, and any other third-party professionals necessary for the Port to perform its duties under the Special Fund Administration Agreement and the Pier 70 Condo RMA.

"**CFD Administrator**" means a special tax consultant or any other person that the Director of Public Finance or the Port Director, as applicable, designates to administer Mello-Roos Taxes from the Pier 70 Condo CFD according to the Pier 70 Condo RMA.

"**CFD Agent**" means the Port, acting on behalf of the Pier 70 Condo CFD.

"**CFD Formation Proceedings**" means the proceedings taken by the Board of Supervisors to form the Pier 70 Condo CFD.

"**CFD Goals**" means the Local Goals and Policies for Community Facilities Districts, approved by Board of Supervisors Resolution No. 387-09 on October 6, 2009, as amended from time to time solely to the extent required under CFD Law or other controlling state or federal law.

"**CFD Law**" means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Community Facilities Act of 1982 (Cal. Gov't Code Sections 53311-53368).

"**Chief Harbor Engineer**" is defined in **VDDA Section 26**.

"**City**" is defined in **VDDA Section 26**.

"**City Fiscal Year**" is defined in **VDDA Section 26**.

"**Closing Date**" is defined in **VDDA Section 26**.

"**Community Facilities District**" means a special tax district formed under CFD Law.

"**Condominium Unit**" is defined in **VDDA Section 26**.

"**County Assessor**" is defined in **VDDA Section 26**.

"**Effective Date**" means the Effective Date of the VDDA.

"**Delay Period**" is defined in **VDDA Section 26**.

"**Development Fee**" means the development fees payable to the Vertical Developer as part of each Approved Payment Request for a PKN Horizontal Improvement equal to six percent (6%) of the Hard Costs and Soft Costs in such Approved Payment Request.

"**Disputing Party**" means a person affected by a dispute that is subject to **Section 7** of this Financing Plan (Resolution of Certain Disputes).

"**Facilities CFD**" means a CFD or part of a CFD that authorizes the levy of Improvement Special Taxes to finance eligible Improvements

"**Facilities Special Taxes"** means Mello-Roos Taxes that are levied to finance eligible improvements in accordance with City approval of the Pier 70 Condo CFD.

"**FC Project Area**" means the 28-Acre Site and 20th Street, 21st Street, and 22nd Street east of Illinois Street, and areas outside of the 28-Acre Site where the Developer will construct improvements serving the 28-Acre Site.

"**Final Assessed Value**" means the final assessed value of a Taxable Parcel in the SUD after the Chief Harbor Engineer issues the related temporary certificate of occupancy or Final Certificate of Occupancy.

"**Final Certificate of Occupancy**" is defined in **VDDA Section 26**.

"**Financing Plan**" means this Financing Plan and Acquisition Agreement, which is VDDA Exhibit I.

"**Financing Plan Termination Notice**" means the notice delivered by the Port to Vertical Developer under **Section 3.4** (Payments) of this Financing Plan after the final payment for PKN Horizontal Improvements to Vertical Developer.

"**First Addendum to FC Financing Plan**" means the First Addendum to Financing Plan between the City, acting by and through the Port, and FC Pier 70, LLC, a copy of which is attached hereto as Exhibit C.

"**General Conditions**" means the overhead of a construction contract, including construction management, field office costs and general requirements associated with Division 1 work rules.

"**General Contractor**" means one or more of Vertical Developer's contractor(s) with the primary responsibility for the construction of all or a portion of the PKN Horizontal Improvements.

"**Governing Law and Policy**" when referring to Public Financing Sources collectively or individually as applicable, means the CFD Law, the IFD Law, the Tax Code, the CFD Goals, and the Port IFD Guidelines.

"**Guaranteed Maximum Price or GMP contract**" means a guaranteed maximum price contract or negotiated contract with cost-efficiency measures.

"**Hard Cost**" means the reasonable and customary out-of-pocket costs actually incurred and paid after the Effective Date by Vertical Developer in connection with PKN Horizontal Improvements, including labor and materials. "Hard Cost" excludes:

(1) Soft Costs;

(2) costs incurred before the Effective Date; and

(3) work that must be repaired or replaced at no additional cost due to failure to satisfy quality, quantity, types of materials, and workmanship in accordance with PKN Improvement Plans approved under the VDDA.

"**Hoedown Yard**" is the designation for two parcels owned by PG&E along Illinois Street roughly between 21st Street and 22nd Street, bisected by a public right-of-way, which is subject

to an Option Agreement for the Purchase and Sale of Real Property between the City and PG&E under which the City has a transferable option to purchase the Hoedown Yard, which the Board of Supervisors approved by Resolution No. 275-14.

"**Horizontal DDA**" is defined in **VDDA Section 26**.

"**ICA**" is defined in **VDDA Section 26**.

"**IFD**" is an acronym for Infrastructure Financing District No. 2 (Port of San Francisco), formed by Ordinance No. 27-16.

"**IFD Agent**" means the Port, acting on behalf of the IFD.

"**IFD Law**" means California law governing infrastructure financing districts, beginning at Government Code section 53395, as amended from time to time.

"**IFD Project Area G-2**" means any designated project area within the IFD, including all Sub-Project Areas and Taxable Parcels in the 28 Acre Site and Parcel K North.

"**Illinois Street Parcels**" means the 20th/Illinois Parcel and the Hoedown Yard in their current ownership and configuration and as they may later be conveyed and reconfigured substantially as shown in the Land Use Plan (designated as Parcel K North, Parcel K South, HDY1, HDY2, and HDY3 on the Reference Date).

"**Improvement**" means any physical change required or permitted to be made to property, including PKN Horizontal Improvements and the Vertical Project.

"**Improvement Special Taxes**" means all categories of Mello-Roos Taxes that the City levies in a City Fiscal Year on Taxable Parcels and residential units in a CFD to finance eligible Improvements authorized through CFD Formation Proceedings, which include Facilities Special Taxes for Zone 1 of the Pier 70 Condo CFD.

"**Indenture**" means one or more indentures, trust agreements, fiscal agent agreements, financing agreements, or other documents containing the terms of any Bonds secured and payable by a pledge of and to be paid by any combination of Mello-Roos Taxes and Project Tax Increment.

"**Indenture Trustee**" means the fiscal agent or trustee under an Indenture.

"**Interest Costs"** means interest and carrying costs of Vertical Developer equal to four and thirty-eight one hundredths percent (4.38%) per annum on all Vertical Developer payments of Soft Costs and Hard Costs for PKN Horizontal Improvements accruing monthly from the date of each payment until the date of reimbursement of Vertical Developer, but not including Delay Periods.

"**Material Change Order**" is defined in **Section 2.2(e)** (Change Orders).

"**Mello-Roos Bonds**" means one or more series of taxable or tax-exempt bonds, including refunding bonds, or any other debt (as defined in CFD Law) that the City issues for a Facilities CFD, secured and payable by a pledge of Improvement Special Taxes, Allocated Tax Increment, or both, for any purpose authorized under Governing Law and Policy.

"**Michigan Street**" is defined in **VDDA Recital F**.

"**Michigan Street Plaza**" is defined in **VDDA Section 26**.

"**Michigan Street Reserve**" means a reserve account for the deposit of Facilities Special Taxes levied upon and collected from Parcel K North to pay the PKN Capital Costs of the Michigan Street ROW and the Michigan Street Plaza. Amounts in the Michigan Street Reserve do not constitute Project Payment Sources until the PKN Developer has been reimbursed for its PKN Capital Costs of the Michigan Street ROW and the Michigan Street Plaza.

"**Michigan Street ROW**" is defined in **VDDA Section 26**.

"**Michigan Street ROW Surface Improvements**" means the surface improvements to the Michigan Street ROW as further described in the VDDA.

"**Michigan Street Sub-Surface Improvements**" means the sub-surface improvements within the Michigan Street ROW and Michigan Street Plaza as further described in the VDDA.

"**Mello-Roos Taxes**" means special taxes that the City levies in a City Fiscal Year on Taxable Parcels in any CFD in accordance with the applicable RMA, including delinquent special taxes collected at any time by payment or through foreclosure.

"**Official Records**" means official real estate records that the County Assessor records and maintains.

"**Ongoing Maintenance Costs**" means maintenance and capital repair and replacement costs of maintained facilities, including Michigan Street and the 20th Street Plaza and parks and streets in the Pier 70 Project that will be paid by Services Special Taxes, including:

(i) landscaping and irrigation systems and other equipment, material, and supplies directly related to maintaining and replacing landscaped areas and water features;

(ii) maintenance and replacement as needed of Public Spaces and Public ROWs, including street cleaning and paving (but not street reconstruction);

(iii) lighting, rest rooms, trash receptacles, park benches, planting containers, picnic tables, and other furniture and fixtures and signage;

(iv) utilities;

(v) general liability insurance for any Public ROWs or structures in Public ROWs that Public Works does not submit to the Board of Supervisors for City acceptance for City General Fund liability purposes and other commercially reasonable insurance coverages;

(vi) security;

(vii) replacement reserves; and

(viii) Port, City, or third party personnel, administrative, and overhead costs related to maintenance or to contracting for and managing third-party maintenance.

"**Party**" is defined in **VDDA Section 26**.

"**Parcel**" means a specific development parcel within the SUD, which has letter or number modifiers, or both (e.g., Parcel E1, Parcel G, etc.).

"**Parcel K North**" is defined in **VDDA Recital A**.

"**Payment Agent**" means an Indenture Trustee or the Special Fund Trustee that will disburse funds to pay an Approved Payment Request as directed by the Port Finance Director.

"**Payment Request**" means Vertical Developer's request to the Port in the form of Exhibit A for payment of PKN Capital Costs of PKN Horizontal Improvements.

"**Pier 70 Condo CFD**" means the CFD that will include Parcel K North and all Option Parcels in the 28 Acre Site that the Port sells for development as Residential Condo Projects, to be named "*City and County of San Francisco Special Tax District No. [TBD] (Pier 70 Condominiums)*"

"**Pier 70 Condo CFD Proceeds**" means Facilities Special Taxes and proceeds of Bonds secured by Facilities Special Taxes from Taxable Parcels in the Pier 70 Condo CFD.

"**Pier 70 Condo CFD RMA**" means the Rate and Method of Apportionment for the Pier 70 Condo CFD which includes proposed Mello-Roos Tax rates for Parcel K North in Zone 1.

"**Pier 70 Project**" is defined in **VDDA Section 26**.

"**PKN Capital Costs**" means the Hard Costs, Soft Costs, Interest Costs and Development Fees of PKN Horizontal Improvements.

"**PKN Horizontal Improvements**" is defined in **VDDA Recital F** and shall consist of the 20th Street Plaza, the Michigan Street ROW Surface Improvements, the Michigan Street Sub-Surface Improvements, and the Michigan Street Plaza, each of which shall be referred to herein as a "PKN Horizontal Improvement."

"**PKN Improvement Area**" is defined in **VDDA Section 26**.

"**PKN Improvement Plans**" is defined in **VDDA Section 26**.

"**PKN Payment Sources**" means: 1) for Michigan Street ROW (including Michigan Street Sub-Surface Improvements and Michigan Street Surface Improvements) and Michigan Street Plaza, Facilities Special Taxes from Zone 1 of the Pier 70 Condo CFD and the proceeds from Mello-Roos Bonds secured by Facilities Special Taxes from Zone 1 of the Pier 70 Condo CFD, and 2) for the 20th Street Plaza, Residential Condo Project Tax Increment and the proceeds of Tax Increment Bonds that are secured by Residential Condo Project Tax Increment collected from the Property.

"**Port**" is defined in **VDDA Section 26**.

"**Port Audit**" means a financial review performed by a CPA on behalf of the Port under **Section 3.7(a)** (Port Audit).

"**Port Default**" is defined in **Section6.2**.

"**Port Finance Director**" means the Port's Deputy Director, Finance and Administration.

"**Port IFD Guidelines**" means the Guidelines for the Establishment and Use of an Infrastructure Financing District with Project Areas on Land under the Jurisdiction of the San Francisco Port Commission, adopted April 23, 2013, by Board of Supervisors Resolution No. 123 13, as amended from time to time solely to the extent required under IFD Law or other controlling state or federal law.

"**Project Requirements**" is defined in **VDDA Section 13.1**.

"**Project Area G**" means the IFD project area formed by Ordinance No. 27-16.

"**Project Tax Increment**" means 91.11% of Allocated Tax Increment.

"**Public Financing Sources**" means, separately or collectively, any source of financing available under CFD Law and IFD Law, including Facilities Special Taxes, Allocated Tax Increment, and Bonds issued to finance PKN Horizontal Improvements.

"**Public ROWs**" means public streets, sidewalks, shared public ways, bicycle lanes, and other paths of travel, associated landscaping and furnishings, and related amenities.

"**Public Space**" means public parks, public recreational facilities, public access, open space, and other public amenities, some of which may be rooftop facilities.

"**Rate and Method of Apportionment**" means a financing document that the Board of Supervisors will adopt by a CFD resolution of formation that will prescribe how and at what rates the City will levy and collect Mello-Roos Taxes from taxpayers in the Pier 70 Condo CFD.

"**Reserve Limitation**" means, so long as it is applicable to Project Area G, a five year limit imposed by IFD Law on accumulating Tax Increment before expending Tax Increment on eligible costs.

"**Residential Condo Project**" means a residential parcel that is developed with for-sale condominium units within Sub-Project Area G-2, including Parcel K North.

"**Residential Condo Project Tax Increment**" means the Project Tax Increment derived from a Residential Condo Project.

"**RMA**" is an acronym for the Rate and Method of Apportionment for the Pier 70 Condo CFD.

"**Services Special Taxes**" means Mello-Roos Taxes that the City levies in a City Fiscal Year on Taxable Parcels in the Pier 70 Condo CFD to fund Ongoing Maintenance Costs.

"**Shoreline Protection Facilities**" means future waterfront improvements at the San Francisco shoreline to protect the area from perils associated with seismic events and climate change, including sea level rise and floods, and other public improvements approved by the Port Commission and the Board of Supervisors.

"**Soft Costs**" means the reasonable and customary out-of-pocket costs actually paid by Vertical Developer in connection with the PKN Horizontal Improvements, including:

(i) architectural, engineering, consultant, attorney, and other professional fees;

(ii) construction insurance (including general liability, automobile liability, worker's compensation, personal property, flood, pollution legal liability, comprehensive personal liability, builder's risk, and professional services insurance);

(iii) commercially reasonable construction management fees paid by Vertical Developer, a Transferee of Vertical Developer, or their respective Affiliates;

(iv) regulatory, building (including plan review and inspection and site permit), encroachment, and other fees directly related to the PKN Horizontal Improvements and payable to the City, Port or other public agency;

(v) Implementation of Mitigation Measures for PKN Horizontal Improvements;

(vi) Port Costs directly related to the PKN Horizontal Improvements;

(vii) security required under the VDDA or otherwise in connection with the PKN Horizontal Improvements, including any 20th Street Security;

(viii) safety and security measures; and

(ix) third-party costs to participate in audits, including Port Audits, and to prepare and store Vertical Developer's Books and Records related to PKN Horizontal Improvements.

"**Soft Costs**" excludes:

(1) Hard Costs;

(2) Vertical Developer's (or any Affiliate's) corporate office, personnel, and overhead costs;

(3) construction financing costs (loan fees and interest) for PKN Horizontal Improvements;

(4) Interest Costs

(5) Development Fees; and

(6) costs associated with designing or constructing the Vertical Project.

"**Special Fund Administration Agreement**" means an agreement between the Port in its proprietary capacity, as CFD Agent, and as IFD Agent, and the Special Fund Trustee authorizing

the trustee to receive, administer, and disburse funds in the Special Fund Trust Account to implement this Financing Plan.

"**Special Fund Trust Account**" means an account for the deposit and distribution of Facilities Special Taxes and Project Tax Increment for eligible uses.

"**Special Fund Trustee**" means a bank, national banking association, or a trust company having a combined capital (exclusive of borrowed capital) and surplus of at least $50 million, selected by the City for the purposes of managing the Special Fund Trust Account, and that is subject to supervision or examination by federal or state authority.

"**Special Provisions**" is defined in **VDDA Section 26**.

"**State**" means the State of California.

"**Subdivision Code**" is defined in **VDDA Section 26**.

"**Subdivision Maps**" is defined in **VDDA Section 26**.

"**Sub-Project Area G 2**" means the sub-project area of IFD Project Area G described in Appendix G-2.

"**Substantial Completion**" is defined in **VDDA Section 26**.

"**SUD**" is defined in **VDDA Section 26**.

"**SUD Project**" is defined in **VDDA Section 26**.

"**Tax Code**" means the Internal Revenue Code of 1986, as amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the United States Internal Revenue Code.

"**Tax Increment**" is defined in **VDDA Section 26**.

"**Tax Increment Bonds**" means any Bonds of the IFD with respect to Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4, including obligations incurred under a Pledge Agreement, secured and payable by a pledge of or otherwise payable from Allocated Tax Increment.

"**Tax Increment Bonds**" excludes Mello-Roos Bonds.

"**Taxable Parcel**" means an assessor's parcel of real property or other real estate interest that is not exempt from Mello-Roos Taxes.

"**Transaction Documents**" is defined in **VDDA Section 26**.

"**Transferee**" is defined in **VDDA Section 26**.

"**VDDA**" is an acronym for Vertical Disposition and Development Agreement.

"**VDDA Exhibit I**" means this Financing Plan.

"**Vertical Developer**" is defined in the preamble to the VDDA.

"**Vertical Developer Default**" is defined in **VDDA Section 19.1**.

"**Vertical Disposition and Development Agreement**" means that Vertical Disposition and Development Agreement by and between Port and Vertical Developer, effective as of the Effective Date.

"**Vertical Project**" is defined in **VDDA Recital F**.

"**Zone 1**" is the zone in the Pier 70 Condo CFD that contains, and is limited to, Parcel K North, which will be specified in the CFD Formation Proceedings.

"**Zone 2**" is the zone in the Pier 70 Condo CFD that contains all Residential Condo Projects in the 28 Acre Site.

9. MISCELLANEOUS.

9.1. ***Party Relationship***. The Port is not, and none of the provisions in this Financing Plan will be deemed to make the Port, a partner in Vertical Developer's business, or a joint venturer or member in any joint enterprise with Vertical Developer. No Party has the right to act as the agent of any other Party in reference to this Financing Plan.

9.2. ***Relationship to Public Works Contracting***. The VDDA and this Financing Plan provide for the Port's acquisition of PKN Horizontal Improvements from time to time from PKN Payment Sources and is not intended to be a public works contract. In that regard, the Port and Vertical Developer agree to all of the following statements.

(a) Local Concern. Vertical Developer's construction of PKN Horizontal Improvements is of local, not statewide, concern.

(b) Public Contract Code Inapplicable. Neither the California Public Contract Code nor the City's public works requirements, except as set forth in the VDDA, apply to Vertical Developer's construction of the PKN Horizontal Improvements.

(c) Private Contracts. Except as set forth in **VDDA Section 12.3**, Vertical Developer will award all contracts for the construction of the PKN Horizontal Improvements.

(d) No Advantage. Requiring Vertical Developer to comply with the Public Contract Code and the City's public works requirements would be incongruous and would not produce an advantage to the City, the Port, or the project.

(e) Third-Party Work. Construction of the PKN Horizontal Improvements may be performed by Vertical Developer, or by contractors employed by Vertical Developer.

9.3. ***Independent Contractor***.

(a) No Obligation to Contractors. In performing under this Financing Plan, Vertical Developer is an independent contractor and not the agent or employee of the Port, the City, the CFD, or the IFD. None of the Port, the City, the CFD, or the IFD has any obligation to make payments to any contractor, subcontractor, agent, consultant, employee, or supplier of Vertical Developer.

(b) Port Determination. The Port has determined that it would obtain no advantage by directly undertaking the construction of the PKN Horizontal Improvements, and that the VDDA requires that the PKN Horizontal Improvements be constructed by Vertical Developer as if they had been constructed under the direction and supervision, or under the authority, of the applicable Acquiring Agency.

9.4. ***Approvals Standards***. The Parties agree that the approval standards and procedures below will apply to implementation of this Financing Plan except as otherwise specified.

(a) No Limitation on Regulatory Capacity. This Financing Plan does not constrain the Port's exercise of regulatory authority.

(b) Proprietary Capacity. The Port, when acting in its proprietary capacity as landowner and landlord under this Financing Plan, will make determinations in its reasonable judgment except as otherwise specified in this Financing Plan.

(c) Vertical Developer. Vertical Developer when acting under this Financing Plan, will make determinations in its reasonable judgment except as otherwise specified in this Financing Plan.

(d) Authorized Vertical Developer Representative. Vertical Developer must designate from time to time by notice to Port under **VDDA Section 25.2** (Notices) a representative who is authorized to act on Vertical Developer's behalf in reference to requests for approvals or other actions. Port will rely on any notice delivered under this Section until superseded by a later notice.

9.5. ***Vertical Developer Representations and Warranties***. Vertical Developer's representations and warranties to Port in **VDDA Section 25.4** are incorporated herein.

9.6. ***Standards Otherwise Applicable***. Except as expressly provided otherwise in this Financing Plan, whenever a Party is permitted to make a judgment, form an opinion, judge the sufficiency of the other Party's performance, or exercise discretion in taking (or refraining from taking) any action or making any determination, that Party must proceed with due diligence and employ commercially reasonable standards in doing so. In general, the Parties' ministerial acts in implementing this Financing Plan, including construction of PKN Horizontal Improvements, approvals, disapprovals, demands for performance, requests for additional information, and any exercise of an election or option, must be commercially reasonable. The requirements for approvals under this Financing Plan extend to and bind any Agents of Vertical Developer or of the Port that act on behalf of their principals.

9.7. ***Limitations on Liability of the Parties***.

(a) No Consequential, Punitive, or Special Damages.

(i) Neither Vertical Developer nor the Port would have entered into or become a Party to this Financing Plan if it could be liable for actual, indirect, consequential, incidental, punitive, or special damages, including, but not limited to, lost opportunities, lost profits or other damages of a consequential nature under this Financing Plan, . Accordingly, Vertical Developer and the Port each waives any Claims against the other Party, and covenants not to sue the other, for indirect or consequential, punitive, or special damages under this Financing Plan, including loss of profit, loss of business opportunity, or damage to goodwill.

(ii) The waivers in this Financing Plan will not affect each Party's right to recover actual damages that arise from a Breaching Party's failure to: (1) pay any sum when due under Financing Plan; (2) satisfy any indemnity under this Financing Plan; or (3) pay Attorneys' Fees and Costs when due under an Arbitrator's decision or a court's final judgment.

9.8. ***Notice*** . Notices under this Financing Plan shall be provided in accordance with **VDDA Section 25.2** (Notices).

[Remainder of Page Intentionally Left Blank]

Vertical Developer and the Port have executed this Financing Plan as of the last date written below.

DEVELOPER:

64 PKN OWNER, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

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. 17-__ and Board of Supervisors Resolution No. _____.

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

By: _____

Deputy City Attorney

EXHIBIT A

Form of Payment Request

PAYMENT REQUEST NO. _____

PRINCIPAL AMOUNT REQUESTED: $_____ for PKN Capital Costs of PKN Horizontal Improvements.

To the Chief Harbor Engineer and the Port:

1. I am authorized to execute this Payment Request on behalf of Vertical Developer.

2. The costs for which payment is requested:

   (a) have not been inflated in any respect;

   (b) have not been previously paid;

   (c) are not the subject of any previously submitted Payment Requests; and

   (d) have been calculated in conformance with the Financing Plan.

3.

[ ] The Acquiring Party has inspected the PKN Horizontal Improvement for which payment is requested (described in **Exhibit A-1** (Form: Components or Costs Covered by Payment Request)) and determined that they have been constructed in accordance with the Financing Plan. The PKN Capital Costs for which payment is requested are not the subject of dispute with any contractor, subcontractor, materialman, or other person who supplied goods or labor, as evidenced by the attached lien releases.

[ ] The Chief Harbor Engineer has inspected the PKN Horizontal Improvement for which payment is requested and determined that they have been constructed in accordance with the Financing Plan . The costs for which payment is requested are not the subject of dispute with any contractor, subcontractor, materialman, or other person who supplied goods or labor, as evidenced by the attached lien releases.

[ ] The PKN Horizontal Improvement is at the stage of [Substantial Completion]/[Acceptance].

4. Vertical Developer is in compliance with the VDDA and the Financing Plan.

5. Vertical Developer is not:

   (a) delinquent in the payment of ad valorem real property taxes, possessory interest taxes, Mello-Roos Special Taxes, or special assessments levied on Parcel K North; or

   (b) in default under the Financing Plan or the VDDA.

6. When this Payment Request is approved, payments are to be made as follows:

[ ] To Vertical Developer, the amount of $ _____ to its deposit account at the following financial institution by wire, according to the following instructions:

[Insert wiring instructions.]

By signing below, I certify that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the best of my knowledge based on reasonable investigation and inquiry.

By: _____
Authorized Representative of
64 PKN Owner, LLC
Date: _____

Attachments:
[ ] Notice of approval
[ ] Unconditional lien releases from:
[ ] Conditional lien releases from:
[ ] For Completed PKN Horizontal Improvement:
Copy of Chief Harbor Engineer Approval
[ ] Exhibit A-1

Payment Request approved on _____

By: _____
Chief Harbor Engineer

EXHIBIT A-1

Form: Work or Costs Covered by Payment Request

PAYMENT REQUEST NO. _____

1. The Components for which payment is requested under this Payment Request are:

_____

_____

_____

_____

_____

_____

2. Information for each contractor, subcontractor, materialman, and other contract for which payment is requested under this Payment Request is shown below.

Name	Contract Amount ($)	Date Paid by Vertical Developer	Requested Amount ($)	Previously Paid ($)
Total Requested:				

Attachments:
[ ] Proof of Payment for each amount specified above

EXHIBIT B

Pier 70 Condo CFD RMA

EXHIBIT C

First Addendum to FC Financing Plan

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
MITIGATION MEASURES FOR THE PIER 70 MIXED-USE DISTRICT PROJECT					
Cultural Resources (Archaeological Resources) Mitigation Measures					
M-CR-1a: Archeological Testing, Monitoring, Data Recovery and Reporting Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources. The project sponsors shall retain the services of an archeological consultant from rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsors shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the	Project sponsors[2] to retain qualified professional archaeologist from the pool of archaeological consultants maintained by the Planning Department. The archaeological consultant shall undertake an archaeological testing program as specified herein. Project sponsors,	Prior to the issuance of site permits, submittal of all plans and reports for approval by the ERO.	Archaeological consultant's work shall be conducted in accordance with this measure at the direction of the ERO.	Considered complete when project sponsor retains a qualified professional archaeological consultant and archeological consultant has approved scope by the ERO for the archeological testing program	Planning Department

[1] Both the City and the Port have jurisdiction over portions of the Project Site. This column identifies the agency or agencies with monitoring responsibility for each mitigation and improvement measure. The 28-Acre Site and 20th/Illinois Parcels are located within the Port's building permit jurisdiction. The Hoedown Yard parcel is located within the San Francisco Department of Building Inspection (DBI).

[2] Note: For purposes of this MMRP, unless otherwise indicated, the term "project sponsor" shall mean the party (*i.e.*, the Developer under the DDA, a Vertical Developer (as defined in the DDA) or Port, as applicable, and their respective contractors and agents) that is responsible under the Project documents for construction of the improvements to which the Mitigation Measure applies, or otherwise assuming responsibility for implementation of the mitigation measure.

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in State CEQA Guidelines Section 15064.5 (a) and (c). <u>Consultation with Descendant Communities</u> On discovery of an archeological site associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to consult with the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.	archaeological consultant shall contact the ERO and descendant group representative upon discovery of an archaeological site associated with descendant Native Americans or the Overseas Chinese. The representative of the descendant group shall be given the opportunity to monitor archaeological field investigations on the site and consult with the ERO regarding appropriate archaeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archaeological site.	For the duration of soil-disturbing activities.	Archaeological Consultant shall prepare a Final Archaeological Resources Report in consultation with the ERO (per below). A copy of this report shall be provided to the ERO and the representative of the descendant group.	Considered complete upon submittal of Final Archaeological Resources Report.	
<u>Archeological Testing Program</u>	<u>Development of</u>	Prior to any	Archaeological	Considered	Planning

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the Proposed Project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA. At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.	<u>ATP</u>: Project sponsors and archaeological consultant in consultation with the ERO. <u>Archeological Testing Report</u>: Project sponsors and archaeological consultant in consultation with the ERO.	excavation, site preparation or construction, and prior to testing, an ATP for a defined geographic area and/or specified construction activities is to be submitted to and approved by the ERO. A single ATP or multiple ATPs may be produced to address project phasing. At the completion of each archaeological testing program.	consultant to undertake ATP in consultation with ERO. Archaeological consultant to submit results of testing, and in consultation with ERO, determine whether additional measures are warranted. If significant archaeological	complete with approval of the ATP by the ERO and on finding by the ERO that the ATP is implemented. Considered complete on submittal to ERO of report(s) on ATP findings.	Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
			resources are present and may be adversely affected, project sponsors, at its discretion, may elect to redesign a project, or implement data recovery program, unless ERO determines the archaeological resource is of greater interpretive than research significance and that interpretive use is feasible.		
<u>Archeological Monitoring Program</u> If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented, the AMP would minimally include the following provisions: • The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the AMP prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. A single AMP or multiple AMPs may be produced to address project phasing. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring	Project sponsors and archaeological consultant at the direction of the ERO.	The archaeological consultant, project sponsors, and ERO shall meet prior to the commencement of soil-disturbing activities for a defined geographic area and/or specified construction	If required, archaeological consultant to prepare the AMP in consultation with the ERO.	Considered complete on approval of AMP(s) by ERO; submittal of report regarding findings of AMP(s); and finding by ERO that AMP(s) is implemented.	Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
because of the risk these activities pose to potential archeological resources and to their depositional context. The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource; • The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; • The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis; If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, pile driving activity that may affect the archeological resource shall be suspended until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the		activities. The ERO in consultation with the archaeological consultant shall determine what archaeological monitoring is necessary. A single AMP or multiple AMPs may be produced to address project phasing.			

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible. Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.					
Archeological Data Recovery Program If the ERO, in consultation with the archeological consultant, determines that an archeological data recovery programs shall be implemented based on the presence of a significant resource, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, shall be limited to the portions of the historical property that could be adversely affected by the Proposed Project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.	Project sponsors and archaeological consultant at the direction of the ERO.	Upon determination by the ERO that an ADRP is required.A single ADRP or multiple ADRPs may be produced to address project phasing.	If required, archaeological consultant to prepare an ADRP(s) in consultation with the ERO.	Considered complete on submittal of ADRP(s) to ERO.	

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
The scope of the ADRP shall include the following elements: • *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations. • *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures. • *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies. • *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. • *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. • *Final Report.* Description of proposed report format and distribution of results. • *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.					
<u>Human Remains and Associated or Unassociated Funerary Objects</u> The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the coroner of the City and County of San Francisco and in the event of the coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project	Project sponsors and archaeological consultant, in consultation with the San Francisco Coroner, NAHC, ERO, and MLD.	In the event human remains and/or funerary objects are encountered.	Archaeological consultant/ archaeological monitor/project sponsors or contractor to contact San Francisco County Coroner and ERO.	Ongoing during soils disturbing activity. Considered complete on notification of the San Francisco County Coroner	Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
sponsors, ERO, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (State CEQA Guidelines Section 15064.5(d)). The agreement shall take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such an agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.			Implement regulatory requirements, if applicable, regarding discovery of Native American human remains and associated/unassociated funerary objects. Contact archaeological consultant and ERO.	and NAHC, if necessary.	
<u>Final Archeological Resources Report</u> The archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report. The FARR may be submitted at the conclusion of all construction activities associated with the Proposed Project or on a parcel-by-parcel basis. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high	Project sponsors and archaeological consultant at the direction of the ERO. The ERO shall provide to the archaeological consultant(s) preparing the FARR reports and relevant data obtained through implementation of this Mitigation Measure M-CR-1a.	For Horizontal Developer-prior to determination of substantial completion of infrastructure at each sub-phase For Vertical Developer-prior to issuance of Certificate of Temporary or Final Occupancy, whichever occurs first	If applicable, archaeological consultant to submit a Draft and final FARR to ERO based on reports and relevant data provided by the ERO Archaeological consultant to distribute FARR.	Considered complete on submittal of FARR and approval by ERO. Considered complete when archaeological consultant provides written certification to the ERO that the required FARR	Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.		If applicable, upon approval of the FARR by the ERO.		distribution has been completed.	
M-CR-1b: Interpretation Based on a reasonable presumption that archeological resources may be present within the project site, and to the extent that the potential significance of some such resources is premised on CRHR Criteria 1 (Events), 2 (Persons), and/or 3 (Design/Construction), the following measure shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources if significant archeological resources are discovered. The project sponsors shall implement an approved program for interpretation of significant archeological resources. The interpretive program may be combined with the program required under Mitigation Measure M-CR-4b: Public Interpretation. The project sponsors shall retain the services of a qualified archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist having expertise in California urban historical and marine archeology. The archeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. The particular program for interpretation of artifacts that are encountered within the project site will depend upon the results of the data recovery program and will be the subject of continued discussion between the ERO, consulting archeologist, and the project sponsors. Such a program may include, but is not limited to, any of the following (as outlined in the ARDTP): surface commemoration of the original location of resources; display of resources and associated artifacts (which may offer an underground view to the public); display of interpretive materials such as graphics, photographs, video, models, and public art; and academic and popular publication of the results of the data recovery. The interpretive program shall include an on-site	Project sponsors and archaeological consultant at the direction of the ERO.	Prior to issuance of final certificate of occupancy	Archaeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. All plans and recommendations for interpretation by the archaeological consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until deemed final by the ERO. The ERO to approve final interpretation program. Project sponsors to implement an approved	Considered complete upon installation of approved interpretation program, if required.	Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
component. The archeological consultant's work shall be conducted at the direction of the ERO, and in consultation with the project sponsors. All plans and recommendations for interpretation by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.			interpretation program.		
Mitigation Measure M-CR-5: Preparation of Historic Resource Evaluation Reports, Review, and Performance Criteria. Prior to Port issuance of building permits associated with Buildings 2, 12 and 21, Port of San Francisco Preservation staff shall review and approve future rehabilitation design proposals for Buildings 2, 12, and 21. Submitted rehabilitation design proposals for Buildings 2 and 12 shall include, in addition to proposed building design, detail on the proposed landscaping treatment within a 20-foot-wide perimeter of each building. The Port's review and analysis would be informed by Historic Resource Evaluation(s) provided by the project sponsors. The Historic Resource Evaluation(s) shall be prepared by a qualified consultant who meets or exceeds the Secretary of the Interior's Professional Qualification Standards in historic architecture or architectural history. The scope of the Historic Resource Evaluation(s) shall be reviewed and approved by Port Preservation staff prior to the start of work. Following review of the completed Historic Resource Evaluation(s), Port preservation staff would prepare one or more Historic Resource Evaluation Response(s) that would contain a determination as to the effects, if any, on historical resources of the proposed renovation. The Port shall not issue buildings permits associated with Buildings 2, 12, and 21 until Port preservation staff conclude that the design (1) conforms with the Secretary of the Interior's Standards for Rehabilitation; (2) is compatible with the UIW Historic District; and (3) preserves the building's historic materials and character-defining features, and repairs instead of replaces deteriorated features, where feasible. Should alternative materials be proposed for replacement of historic materials, they shall be in keeping with the size, scale, color, texture, and general appearance. The performance criteria shall ensure	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Prior to the issuance of building permits associated with Buildings 2, 12 and 21.	Qualified historian to prepare historic resource evaluation documentation and present to Port staff to determine conformance to the Secretary's Standards.	Considered complete upon approval by the Port staff.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
retention of the following character-defining features of each historic building: • **Building 2**: (1) board-formed concrete construction; (2) six-story height; (3) flat roof; (4) rectangular plan and north-south orientation; (5) regular pattern of window openings on east and west elevations; (6) steel, multi-pane, fixed sash windows (floors 1-5); (7) wood sash windows (floor 6); (8) elevator/stair tower that rises above roofline and projects slightly from west façade. • **Building 12**: (1) steel and wood construction; (2) corrugated steel cladding (except the as-built south elevation which was always open to Building 15); (3) 60-foot height; (4) Aiken roof configuration with five raised, glazed monitors; (5) clerestory multi-lite steel sash awning windows along the north and south sides of the monitors; (6) multi-lite, steel sash awning widows, arranged in three bands (with a double-height bottom band) on the north and west elevations, and in four bands on the east elevation; (7) 12-bay configuration of east and west elevations; (8) north-south roof ridge from which roof slopes gently (1/4 inch per foot) to the east and west • **Building 21:** (1) steel frame construction; (2) corrugated metal cladding; (3) double-gable roof clad in corrugated metal, with wide roof monitor at each gable; (4) multi-lite, double hung wood or horizontal steel sash windows; and (5) two pairs of steel freight loading doors on the north elevation, glazed with 12 lites per door. Port staff shall not approve any proposal for rehabilitation of Buildings 2, 12, and 21 unless they find that such a scheme conforms to the Secretary's Standards as specified for each building.					
Mitigation Measure M-CR-11: Performance Criteria and Review Process for New Construction In addition to the standards and guidelines established as part of the Pier 70	Project sponsors	Prior to issuance of a building permit for new	San Francisco Preservation Planning staff, in consultation with	Considered complete when Planning and Port Preservation	Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
SUD and *Design for Development*, new construction and site development within the Pier 70 SUD shall be compatible with the character of the UIW Historic District and shall maintain and support the District's character-defining features through the following performance criteria (terminology used has definition as provided in the *Design for Development*): 1. New construction shall comply with the Secretary of the Interior's Rehabilitation Standard No. 9: "New Addition, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the integrity of the property and its environment." 2. New construction shall comply with the Infill Development Design Criteria in the Port of San Francisco's *Pier 70 Preferred Master Plan* (2010) as found in Chapter 8, pp 57-69 (a policy document endorsed by the Port Commission to guide staff planning at Pier 70). 3. New construction shall be purpose-built structures of varying heights and massing located within close proximity to one another. 4. New construction shall not mimic historic features or architectural details of contributing buildings within the District. New construction may reference, but shall not replicate, historic architectural features or details. 5. New construction shall be contextually appropriate in terms of massing, size, scale, and architectural features, not only with the remaining historic buildings, but with one another. 6. New construction shall reinforce variety through the use of materials, architectural styles, rooflines, building heights, and window types and through a contemporary palette of materials as well as those found within the District.		construction.	the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning and Port staff that confirms compliance of all proposed new construction with these guiding plans and policies. San Francisco	staff note compliance with the Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, outlined in the written memorandum.	

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7. Parcel development shall be limited to the new construction zones identified in *Design for Development* Figure 6.3.1: Allowable New Construction Zones. 8. The maximum height of new construction shall be consistent with the parcel heights identified in *Design for Development* Figure 6.4.2: Building Height Maximum. 9. The use of street trees and landscape materials shall be limited and used judiciously within the Pier 70 SUD. Greater use of trees and landscape materials shall be allowed in designated areas consistent with *Design for Development* Figure 4.8.1: Street Trees and Plantings Plan. 10. New construction shall be permitted adjacent to contributing buildings as identified in *Design for Development* Figure 6.3.2: New Construction Buffers. 11. No substantive exterior additions shall be permitted to contributing Buildings 2, 12, or 21. Building 12 did not historically have a south-facing façade; therefore, rehabilitation will by necessity construct a new south elevation wall. Building 21 shall be relocated approximately 75 feet east of its present placement, to maintain the general historic context of the resource in spatial relationship to other resources. Building 21's orientation shall be maintained. <u>Building Specific Standards</u> Each development parcel within the Pier 70 SUD has a different physical proximity and visual relationship to the contributing buildings within the UIW Historic District. For those façades immediately adjacent to or facing contributing buildings, building design shall be responsive to identified character-defining features in the manner described in the *Design for Development* Buildings chapter. All other façades shall have greater freedom in the expression of scale, color, use of material, and overall appearance, and shall be permitted if consistent with Secretary Standard No. 9 and the *Design*			Preservation Planning staff must make determination in compliance with the timelines outlined in the Pier 70 Special Use District section of the Planning Code for review of vertical design.		

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRIBUTION PROJECT

MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]

for Development.

Table M.CR.1: Building-Specific Responsiveness, indicates resources that are located adjacent to, and have the greatest influence on the design of, the noted development parcel façade.

Table M.CR.1: Building-Specific Responsiveness

Façade/Parcel Name-Number	Contributing Building (Building No.)
North and West; A	113
North and Northeast; B	113, 6
North; C1	116
East and South; C2	12
South and West; D	2, 12
East and South; E1	21
West; E2	12
West; E4	21
North; F/G	12
East; PKN	113-116

Source: ESA 2015.

Palette of Materials

In addition to the standards and guidelines pertaining to application of

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materials in the *Design for Development*, the following material performance standards would apply to the building design on the development parcels (terminology used has definition as provided in the *Design for Development*): • Masonry panels that replicate traditional nineteenth or twentieth century brick masonry patterns shall not be allowed on the east façade of Parcel PKN, north and west façades of Parcel A or on the north façade of Parcel C1. • Smooth, flat, minimally detailed glass curtain walls shall not be allowed on the façades listed above. Glass with expressed articulation and visual depth or that expresses underlying structure is an allowable material throughout the entirety of the Pier 70 SUD. • Coarse-sand finished stucco shall not be allowed as a primary material within the entirety of the UIW Historic District. • Bamboo wood siding shall not be allowed on façades listed above or as a primary façade material. • Laminated timber panels shall not be allowed on façades listed above. • When considering material selection immediately adjacent to contributing buildings (e.g., 20th Street Historic Core; Buildings 2, 12, and 21; and Buildings 103, 106, 107, and 108 located within or immediately adjacent to the BAE Systems site), characteristics of compatibility and differentiation shall both be taken into account. Material selection shall not duplicate adjacent building primary materials and treatments, nor shall they establish a false sense of historic development. • Avoid conflict of new materials that appear similar or attempt to replicate historic materials. For example, Building 12 has character-defining corrugated steel cladding. As such, the eastern					

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façade of Parcel C2, the northern façade of Parcels F and G, and the southern façade of Parcel D1 shall not use corrugated steel cladding as a primary material. As another example, Building 113 has character-defining brick-masonry construction. As such, the northern and western façades of Parcel A and the eastern façade of Parcel K North shall not use brick masonry as a primary material. • Use of contemporary materials shall reflect the scale and proportions of historic materials used within the UIW Historic District. • Modern materials shall be designed and detailed in a manner to reflect but not replicate the scale, pattern, and rhythm of adjacent contributing buildings' exterior materials. <u>Review Process</u> Prior to Port issuance of building permits associated with new construction, San Francisco Preservation Planning staff, in consultation with the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning staff that confirms compliance of all proposed new construction with these guiding plans and policies.					
Transportation and Circulation Mitigation Measures					
Mitigation Measure M-TR-5: Monitor and increase capacity on the 48 Quintara/24th Street bus routes as needed. Prior to approval of the Proposed Project's phase applications, project sponsors shall demonstrate that the capacity of the 48 Quintara/24th Street bus route has not exceeded 85 percent capacity utilization, and that future demand associated with build-out and occupancy of the phase will not cause	Developer, TMA, and SFMTA. Documentation of capacity of the 48 Quintara/24th Street	<u>Demonstration of capacity</u>: Prior to approval of the project's phase applications.	Project sponsors to demonstrate to the SFMTA that each building for which temporary certificates of occupancy are	Considered complete upon approval of the project's phase application.	Planning Department, SFMTA

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
the route to exceed its utilization. Forecasts of travel behavior of future phases could be based on trip generation rates forecast in the EIR or based on subsequent surveys of occupants of the project, possibly including surveys conducted as part of ongoing TDM monitoring efforts required as part of Air Quality Mitigation Measure M-AQ-1f: Transportation Demand Management. If trip generation calculations or monitoring surveys demonstrate that a specific phase of the Proposed Project will cause capacity on the 48 Quintara/24th Street route to exceed 85 percent, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA through the following means: • At SFMTA's request, the project sponsors shall pay the capital costs for additional buses (up to a maximum of four in the Maximum Residential Scenario and six in the Maximum Commercial Scenario). If the SFMTA requests the project sponsor to pay the capital costs of the buses, the SFMTA would need to find funding to pay for the added operating cost associated with operating increased service made possible by the increased vehicle fleet. The source of that funding has not been established. Alternatively, if SFMTA determines that other measures to increase capacity along the route would be more desirable than adding buses, the project sponsors shall pay an amount equivalent to the cost of the required number of buses toward completion of one or more of the following, as determined by SFMTA: • Convert to using higher-capacity vehicles on the 48 Quintara/24th Street route. In this case, the project sponsors shall pay a portion of the capital costs to convert the route to articulated buses. Some bus stops along the route may not currently be configured to accommodate the longer articulated buses. Some bus zones could likely be extended by removing one or more parking spaces; in some locations, appropriate space may not be available. The	bus route shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using a methodology approved by SFMTA and Planning. If documentation of capacity is based on monitoring surveys, the transportation consultant shall submit raw data from such surveys concurrently to SFMTA, the Planning Department, and project sponsors.	If project sponsors demonstrate to the SFMTA that the phase would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR, further monitoring is not required during that phase. Capital Costs: Payment required after SFMTA affirms via letter to the project sponsors that mitigation funds will be	requested would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR. If the project demonstrates (using trip generation rates forecasted in the EIR or through surveys of existing travel behavior at the site) that a specific building would cause capacity to exceed 85 percent based on the Baseline scenario in the EIR or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline		

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
project sponsors' contribution may not be adequate to facilitate the full conversion of the route to articulated buses; therefore, a source of funding would need to be established to complete the remainder, including improvements to bus stop capacity at all of the bus stops along the route that do not currently accommodate articulated buses. • SFMTA may determine that instead of adding more buses to a congested route, it would be more desirable to increase travel speeds along the route. In this case, the project sponsors' contribution would be used to fund a study to identify appropriate and feasible improvements and/or implement a portion of the improvements that would increase travel speeds sufficiently to increase capacity along the bus route such that the project's impacts along the route would be determined to be less than significant. Increased speeds could be accomplished by funding a portion of the planned bus rapid transit system along 16th Street for the 22 Fillmore between Church and Third streets. Adding signals on Pennsylvania Street and 22nd Street may serve to provide increased travel speeds on this relatively short segment of the bus routes. The project sponsors' contribution may not be adequate to fully achieve the capacity increases needed to reduce the project's impacts and SFMTA may need to secure additional sources of funding. Another option to increase capacity along the corridor is to add new a Muni service route in this area. If this option is selected, project sponsors shall fund purchase of the same number of new vehicles outlined in the first option (four for the Maximum Residential Alternative and six for the Maximum Commercial Alternative) to be operated along the new route. By providing an additional service route, a percentage of the current transit riders on the 48 Quintara/24th Street would likely shift to the new route, lowering the capacity utilization below the 85 percent utilization threshold. As for the first option, funding would need to be secured to pay for operating the new route.		spent on implementation of M-TR-5 through purchase of additional buses or alternative measure in accordance with M-TR-5. Capital costs for more than four buses, up to a maximum of six buses, shall only be required if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR, and if project sponsors demonstrate that the	scenario without the Proposed Project, and the SFMTA has committed to implement M-TR-5, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA.		

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		building would cause capacity to exceed 85 percent or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline scenario without the Proposed Project.			
Mitigation Measure M-TR-10: Improve pedestrian facilities on Illinois Street adjacent to and leading to the project site. As part of construction of the Proposed Project roadway network, the project sponsors shall implement the following improvements: • Install ADA curb ramps on all corners at the intersection of 22nd Street and Illinois Street • Signalize the intersections of Illinois Street with 20th and 22nd Street. • Modify the sidewalk on the east side of Illinois Street between 22nd and 20th streets to a minimum of 10 feet. Relocate	Project sponsors shall implement the improvements.	During construction of street improvements adjacent to pedestrian facilities on Illinois Street identified in Mitigation Measure M-TR-10.	SFMTA reviews signal and site plans and maps for improvements identified in Mitigation Measure M-TR-10.	Considered complete when street improvements have been built.	SFMTA, Port

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obstructions, such as fire hydrants and power poles, as feasible, to ensure an accessible path of travel is provided to and from the Proposed Project.					
Mitigation Measure M-TR-12A: Coordinate Deliveries The Project's Transportation Coordinator shall coordinate with building tenants and delivery services to minimize deliveries during a.m. and p.m. peak periods. Although many deliveries cannot be limited to specific hours, the Transportation Coordinator shall work with tenants to find opportunities to consolidate deliveries and reduce the need for peak period deliveries, where possible.	Transportation Management Agency Transportation Coordinator.	On-going.	Transportation Management Agency Transportation Coordinator to coordinate with building tenants and delivery services to consolidate deliveries and reduce the need for peak period deliveries, where possible.	On-going during project operations.	Port
Mitigation Measure M-TR-12B: Monitor loading activity and convert general purpose on-street parking spaces to commercial loading spaces, as needed. After completion of the first phase of the Proposed Project, and prior to approval of each subsequent phase, the project sponsors shall conduct a study of utilization of on- and off-street commercial loading spaces. Prior to completion, the methodology for the study shall be reviewed and approved by either: (a) Port Staff in consultation with SFMTA Staff for areas within Port jurisdiction; or (b) SFMTA Staff in consultation with Port Staff for areas within SFMTA jurisdiction. If the result of the study indicates that fewer than 15 percent of the commercial loading spaces are available during the peak loading period, the project sponsors shall incorporate measures to convert existing or proposed general purpose on-street parking spaces to commercial parking spaces in addition to the required off-street spaces.	Developer, TMA or Port.	Prior to approval of the project's phase applications after completion of the first phase.	Project sponsors or TMA to conduct a commercial loading study for the Port.	Considered complete after the Port Staff reviews and approves the study and the project sponsors, Port or TMA incorporates any additional measures necessary for commercial loading.	Port

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Mitigation Measure M-C-TR-4A: Increase capacity on the 48 Quintara/24th bus route under the Maximum Residential Scenario. The project sponsors shall contribute funds for one additional vehicle (in addition to and separate from the four prescribed under Mitigation Measure M-TR-5 for the Maximum Residential Scenario) to reduce the Proposed Project's contribution to the significant cumulative impact to not cumulatively considerable. This shall be considered the Proposed Project's fair share toward mitigating this significant cumulative impact. If SFMTA adopts a strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA and SFMTA Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	Demonstration of Capacity: If necessary, prior to approval of the project's phase applications. Capital Costs: Payment confirmed prior to issuance of building permit for building that would result in exceedance of 85 percent capacity utilization. Capital costs for more than four buses, up to a maximum of six buses, shall be paid if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial	If the Maximum Residential Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors	SFMTA

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		use, identified in Table 2.3 of the EIR.			
Mitigation Measure M-C-TR-4B: Increase capacity on the 22 Fillmore bus route under the Maximum Commercial Scenario. The project sponsors shall contribute funds for two additional vehicles to reduce the Proposed Project's contribution to the significant cumulative impact to not considerable. This shall be considered the Proposed Project's fair share toward mitigating this cumulative impact. If SFMTA adopts an alternate strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA, and SFMTA. Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	If necessary, prior to approval of the project's final phase application. <u>Funds shall be contributed</u> if the total gsf of commercial use for the Project in the final phase application exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR.	If the Maximum Commercial Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors.	SFMTA
Noise and Vibration Mitigation Measures					
Mitigation Measure M-NO-1: Construction Noise Control Plan. Over the project's approximately 11-year construction duration, project	Project sponsors.	Prior to the start of construction activities;	Project sponsors to submit the Construction Noise	Considered complete upon submittal of the	Port or DBI

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
contractors for all construction projects on the Illinois Parcels and 28-Acre Site will be subject to construction-related time-of-day and noise limits specified in Section 2907(a) of the Police Code, as outlined above. Therefore, prior to construction, a Construction Noise Control Plan shall be prepared by the project sponsors and submitted to the Port. The construction noise control plan shall demonstrate compliance with the Noise Ordinance limits. Noise reduction strategies that could be incorporated into this plan to ensure compliance with ordinance limits may include, but are not limited to, the following: • Require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds). • Require the general contractor to locate stationary noise sources (such as the rock/concrete crusher or compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise by as much as 5 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, to the maximum extent practicable. • Require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which would reduce noise levels by as much as 10 dBA.		implementation ongoing during construction.	Control Plan to the Port. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Construction Noise Control Plan to the Port.	

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
• Include noise control requirements for construction equipment and tools, including concrete saws, in specifications provided to construction contractors to the maximum extent practicable. Such requirements could include, but are not limited to, erecting temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses; utilizing noise control blankets on a building structure as the building is erected to reduce noise levels emanating from the construction site; the use of blasting mats during controlled blasting periods to reduce noise and dust; performing all work in a manner that minimizes noise; using equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants; and selecting haul routes that avoid residential uses. • Prior to the issuance of each building permit, along with the submission of construction documents, submit to the Port , as appropriate, a plan to track and respond to complaints pertaining to construction noise. The plan shall include the following measures: (1) a procedure and phone numbers for notifying the Port, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing permitted construction days and hours, noise complaint procedures, and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area and the American Industrial Center (AIC) at least 30 days in advance of extreme noise-generating activities (such as pile driving) about the estimated duration of the activity.	Project sponsors	Prior to the issuance of each building permit for duration of the project.	Project sponsors to submit a plan to track and respond to complaints pertaining to construction noise. A single plan or multiple plans may be produced to address project phasing.	Considered complete upon review and approval of the plan by the Port.	
Mitigation Measure M-NO-2: Noise Control Measures During Pile	Project sponsors and construction	Prior to receiving a	Project sponsors to submit to the Port	Considered complete upon	Port or DBI

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Driving. The Construction Noise Control Plan (required under Mitigation Measure M-NO-1) shall also outline a set of site-specific noise and vibration attenuation measures for each construction phase when pile driving is proposed to occur. These attenuation measures shall be included wherever impact equipment is proposed to be used on the Illinois Parcels and/or 28-Acre Site. As many of the following control strategies shall be included in the Noise Control Plan, as feasible: • Implement "quiet" pile-driving technology such as pre-drilling piles where feasible to reduce construction-related noise and vibration. • Use pile-driving equipment with state-of-the-art noise shielding and muffling devices. • Use pre-drilled or sonic or vibratory drivers, rather than impact drivers, wherever feasible (including slipways) and where vibration-induced liquefaction would not occur. • Schedule pile-driving activity for times of the day that minimize disturbance to residents as well as commercial uses located on-site and nearby. • Erect temporary plywood or similar solid noise barriers along the boundaries of each Proposed Project parcel as necessary to shield affected sensitive receptors. • Other equivalent technologies that emerge over time. • If CRF (including rock drills) were to occur at the same time as pile driving activities in the same area and in proximity to noise-sensitive receptors, pile drivers shall be set back at least 100 feet while rock drills shall be set back at least 50 feet (or vice versa)	contractor(s).	building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	submittal of documentation incorporating identified practices.	

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
from any given sensitive receptor.					
Mitigation Measure M-NO-3: Vibration Control Measures During Construction. As part of the Construction Noise Control Plan required under Mitigation Measure M-NO-1, appropriate vibration controls (including pre-drilling pile holes and using smaller vibratory equipment) shall be specified to ensure that the vibration limit of 0.5 in/sec PPV can be met at adjacent or nearby existing structures and Proposed Project buildings located on the Illinois Parcels and/or 28-Acre Site, except as noted below: • Where pile driving, CRF, and other construction activities involving the use of heavy equipment would occur in proximity to any contributing building to the Union Iron Works Historic District, the project sponsors shall undertake a monitoring program to minimize damage to such adjacent historic buildings and to ensure that any such damage is documented and repaired. The monitoring program, which shall apply within 160 feet where pile driving would be used, 50 feet of where CRF would be required, and within 25 feet of other heavy equipment operation, shall include the following components: o Prior to the start of any ground-disturbing activity, the project sponsors shall engage a historic architect or qualified historic preservation professional to undertake a pre-construction survey of historical resource(s) identified by the Port within 160 feet of planned construction to document and photograph the buildings' existing conditions. o Based on the construction and condition of the resource(s), a structural engineer or other qualified entity shall establish a maximum vibration level that shall not be exceeded at each building, based on existing conditions, character-defining features, soils conditions and anticipated construction practices in use at the time (a common standard is 0.2 inch per	Project sponsors and construction contractor(s).	Prior to receiving a building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	Project sponsors to submit to Port documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Considered complete upon submittal of documentation incorporating identified practices.	Port or Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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second, peak particle velocity). o To ensure that vibration levels do not exceed the established standard, a qualified acoustical/vibration consultant shall monitor vibration levels at each structure within 160 feet of planned construction and shall prohibit vibratory construction activities that generate vibration levels in excess of the standard. Should vibration levels be observed in excess of the standard, construction shall be halted and alternative construction techniques put in practice. (For example, pre-drilled piles could be substituted for driven piles, if soil conditions allow; smaller, lighter equipment could possibly also be used in some cases.) The consultant shall conduct regular periodic inspections of each building within 160 feet of planned construction during ground-disturbing activity on the project site. Should damage to a building occur as a result of ground-disturbing activity on the site, the building(s) shall be remediated to its pre-construction condition at the conclusion of ground-disturbing activity on the site. o In areas with a "very high" or "high" susceptibility for vibration-induced liquefaction or differential settlement risks, the project's geotechnical engineer shall specify an appropriate vibration limit based on proposed construction activities and proximity to liquefaction susceptibility zones and modify construction practices to ensure that construction-related vibration does not cause liquefaction hazards at these homes.					
Mitigation Measure M-NO-4a: Stationary Equipment Noise Controls. Noise attenuation measures shall be incorporated into all stationary equipment (including HVAC equipment and emergency generators) installed on buildings constructed on the Illinois Parcels and 28-Acre Site as well as into the below-grade or enclosed wastewater pump station as necessary to meet noise limits specified in Section 2909 of the Police Code.* Interior	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for each building located on the Illinois Parcels	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port	Port or Planning Department/DBI

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
noise limits shall be met under both existing and future noise conditions, accounting for foreseeable changes in noise conditions in the future (i.e., changes in on-site building configurations). Noise attenuation measures could include provision of sound enclosures/barriers, addition of roof parapets to block noise, increasing setback distances from sensitive receptors, provision of louvered vent openings, location of vent openings away from adjacent commercial uses, and restriction of generator testing to the daytime hours. * Under Section 2909 of the Police Code, stationary sources are not permitted to result in noise levels that exceed the existing ambient (L90) noise level by more than 5 dBA on residential property, 8 dBA on commercial and industrial property, and 10 dBA on public property. Section 2909(d) states that no fixed noise source may cause the noise level measured inside any sleeping or living room in a dwelling unit on residential property to exceed 45 dBA between 10:00 p.m. and 7:00 a.m. or 55 dBA between 7:00 a.m. and 10:00 p.m. with windows open, except where building ventilation is achieved through mechanical systems that allow windows to remain closed.		or the 28-Acre Site, along with the submission of construction documents, the project sponsors shall submit to the Port and the DBI plans for noise attenuation measures on all stationary equipment.			
Mitigation Measure M-NO-4b: Design of Future Noise-Generating Uses near Residential Uses. Future commercial/office and RALI uses shall be designed to minimize the potential for sleep disturbance at any future adjacent residential uses. Design approaches such as the following could be incorporated into future development plans to minimize the potential for noise conflicts of future uses on the project site: • Design of Future Noise-Generating Commercial/Office and RALI Uses. To reduce potential conflicts between sensitive receptors and new noise-generating commercial or RALI uses located adjacent to these receptors, exterior facilities such as loading areas/docks, trash enclosures, and surface parking lots shall be located on the sides of buildings facing away from existing or planned sensitive receptors (residences or passive open space). If	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for commercial, RALI, and parking uses, along with the submission of construction documents, the project sponsors shall submit to the and DBI plans to minimize	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port.	Port or Planning Department/DBI

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
this is not feasible, these types of facilities shall be enclosed or equipped with appropriate noise shielding. • Design of Future Above-Ground Parking Structure. If parking structures are constructed on Parcels C1 or C2, the sides of the parking structures facing adjacent or nearby existing or planned residential uses shall be designed to shield residential receptors from noise associated with parking cars.		noise conflicts with sensitive receivers,			
Mitigation Measure M-NO-6: Design of Future Noise-Sensitive Uses Prior to issuance of a building permit for vertical construction of specific residential building design on each parcel, a noise study shall be conducted by a qualified acoustician, who shall determine the need to incorporate noise attenuation measures into the building design in order to meet Title 24's interior noise limit for residential uses as well as the City's (Article 29, Section 2909(d)) 45-dBA (Ldn) interior noise limit for residential uses. This evaluation shall account for noise shielding by buildings existing at the time of the proposal, potential increases in ambient noise levels resulting from the removal of buildings that are planned to be demolished, all planned commercial or open space uses in adjacent areas, any known variations in project build-out that have or will occur (building heights, location, and phasing), any changes in activities adjacent to or near the Illinois Parcels or 28-Acre Site (given the Proposed Project's long build-out period), any new shielding benefits provided by surrounding buildings that exist at the time of development, future cumulative traffic noise increases on adjacent roadways, existing and planned stationary sources (i.e., emergency generators, HVAC, etc.), and future noise increases from all known cumulative projects located with direct line-of-sight to the project building. To minimize the potential for sleep disturbance effects from tonal noise or nighttime noise events associated with nearby industrial uses, predicted noise levels at each project building shall account for 24/7 operation of the BAE Systems Ship Repair facility, 24/7 transformer noise at Potrero Substation (if it remains an open air facility), and industrial activities at the AIC, to the	Project sponsors and qualified acoustician.	Prior to the issuance of the building permit for vertical construction of any residential building on each parcel, a noise study shall be prepared by a qualified acoustician.	Port Staff to review the noise study. A single noise study or multiple noise studies may be produced to address project phasing.	Considered complete after submittal and approval of the noise study by the Port.	Port or Planning Department/DBI

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
extent such use(s) are in operation at the time the analysis is conducted. Noise reduction strategies such as the following could be incorporated into the project design as necessary to meet Title 24 interior limit and minimize the potential for sleep disturbance from adjacent industrial uses: • Orient bedrooms away from major noise sources (i.e., major streets, open space/recreation areas where special events would occur, and existing adjacent industrial uses, including but not limited to the AIC, PG&E Hoedown Yard (if it is still operating at that time), Potrero Substation, and the BAE site) and/or provide additional enhanced noise insulation features (higher STC ratings) or mechanical ventilation to minimize the effects of maximum instantaneous noise levels generated by these uses even though there is no code requirement to reduce Lmax noise levels. Such measures shall be implemented on Parcels D and E1 (both scenarios), Building 2 (Maximum Residential Scenario only), Parcels PKN (both scenarios), PKS (both scenarios), and HDY (Maximum Residential Scenario only); • Utilize enhanced exterior wall and roof-ceiling assemblies (with higher STC ratings), including increased insulation; • Utilize windows with higher STC / Outdoor/Indoor Transmission Class (OITC) ratings; • Employ architectural sound barriers as part of courtyards or building open space to maximize building shielding effects, and locate living spaces/bedrooms toward courtyards wherever possible; and Locate interior hallways (accessing residential units) adjacent to noisy streets or existing/planned industrial or commercial development.					
Mitigation Measure M-NO-7: Noise Control Plan for Special Event	Developer, Port, parks management	Prior to operation of a	Developer, Port, parks management	Considered complete upon	Port

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Outdoor Amplified Sound. The project sponsors shall develop and implement a Noise Control Plan for operations at the proposed entertainment venues to reduce the potential for noise impacts from public address and/or amplified music. This Noise Control Plan shall contain the following elements: • The project sponsors shall comply with noise controls and restrictions in applicable entertainment permit requirements for outdoor concerts. • Speaker systems shall be directed away from the nearest sensitive receptors to the degree feasible. • Outdoor speaker systems shall be operated consistent with the restrictions of Section 2909 of the San Francisco Police Code, and conform to a performance standard of 8 dBA and dBC over existing ambient L90 noise levels at the nearest residential use.	entity, and/or parks programming entity.	special outdoor amplified sound, the project sponsors, parks management entity, and/or parks programming entity to develop a Noise Control Plan prior to issuance of event permit.	entity, and/or parks programming entity shall submit the Noise Control Plan to the Port.	submission and approval of the NCP by the Port.	
Air Quality Mitigation Measures					
Mitigation Measure M-AQ-1a: Construction Emissions Minimization The following mitigation measure is required during construction of Phases 3, 4, and 5, or after build-out of 1.3 million gross square feet of development, whichever comes first: A. *Construction Emissions Minimization Plan*. Prior to issuance of a site permit, the project sponsors shall submit a Construction Emissions Minimization Plan (Plan) to the Port or Planning Department. The Plan shall detail project compliance with the following requirements: 1. Where access to alternative sources of power is available, portable diesel generators used during construction shall be prohibited. Where portable diesel engines are required because alternative sources of power are not available, the	Project sponsors and construction contractor(s).	Prior to issuance of a site permit, the project sponsors must submit Construction Emissions Minimization Plan Prior to the commencement of construction activities	Project sponsors or contractor to submit a Construction Emissions Minimization Plan. Quarterly reports shall be submitted to Port Staff or Planning Department indicating the construction phase and off-road equipment	Considered complete upon Port or Planning Staff review and approval of Construction Emissions Minimization Plan or alternative measures that achieve the same emissions reduction.	Port or Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRIBUTION PROJECT

MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
diesel engine shall meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available, as defined below. 2. All off-road equipment greater than 25 horsepower that operates for more than 20 total hours over the entire duration of construction activities shall have engines that meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available. If engines that comply with Tier 4 off-road emission standards are not commercially available, then the project sponsors shall provide the next cleanest piece of off-road equipment as provided by the step-down schedules in Table M-AQ-1-1.		during Phase 3, 4, and 5, or prior to construction following build-out of 1.3 million gross square feet of development, the project sponsors must certify (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications. The Plan shall be kept on site and available for review. A sign shall be posted at the perimeter of the construction site indicating the basic	information used during each phase. For off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used. Within six months of the completion of construction activities, the project sponsors shall submit to Port Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.		

Table M-AQ-1-1: Off-Road Equipment Compliance Step-Down Schedule

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 3	CARB PM VDECS (85%)[1]
2	Tier 2	CARB PM VDECS (85%)

How to use the table: If the requirements of (A)(2) cannot be met, then the project sponsors would need to meet Compliance Alternative 1. Should the project sponsors not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met.

[1] CARB, Currently Verified Diesel Emission Control Strategies (VDECS).

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
Available online at http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm. Accessed January 14, 2016. i. With respect to Tier 4 equipment, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; and (ii) geographic proximity of equipment to the project site. ii. With respect to renewable diesel, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; (ii) geographic proximity of fuel source to the project site; and (iii) cost of renewable diesel is within 10 percent of Ultra Low Sulfur Diesel #2 market price. iii. The project sponsors shall maintain records concerning its efforts to comply with this requirement. Should the project sponsor determine either that an off-road vehicle that meets Tier 4 emissions standards or that renewable diesel are not commercially available, the project sponsor shall submit documentation to the satisfaction of Port or Planning Staff and, for the former condition, shall identify the next cleanest piece of equipment that would be use, in compliance with Table M-AQ-1-1. 3. The project sponsors shall ensure that future developers or their contractors require the idling time for off-road and on-road equipment be limited to no more than 2 minutes, except as provided in exceptions to the applicable State regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in		requirements of the Plan and where copies of the Plan are available to the public for review.			

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multiple languages (English, Spanish, and Chinese) in designated queuing areas and at the construction site to remind operators of the 2-minute idling limit. 4. The project sponsors shall require that each construction contractor mandate that construction operators properly maintain and tune equipment in accordance with manufacturer specifications. 5. The Plan shall include best available estimates of the construction timeline by phase with a description of each piece of off-road equipment required for every construction phase and shall be updated pursuant to the reporting requirements in Section B below. Reporting requirements for off-road equipment descriptions and information shall include as much detail as is available, but are not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For Verified Diesel Emission Control Strategies (VDECS) installed, descriptions and information shall include technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date and hour meter reading on installation date. The Plan shall also indicate whether renewable diesel will be used to power the equipment. The Plan shall also include anticipated fuel usage and hours of operation so that emissions can be estimated. 6. The project sponsors and their construction contractors shall keep the Plan available for public review on site during working hours. Each construction contractor shall post at the perimeter of the project site a legible and visible sign summarizing the requirements of the Plan. The sign shall also state that the public may ask to inspect the Plan at any time					

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during working hours, and shall explain how to request inspection of the Plan. Signs shall be posted on all sides of the construction site that face a public right-of-way. The project sponsors shall provide copies of the Plan to members of the public as requested. B. *Reporting.* Quarterly reports shall be submitted to Port or Planning Staff indicating the construction activities undertaken and information about the off-road equipment used, including the information required in Section A(5). In addition, reporting shall include the approximate amount of renewable diesel fuel used. Within 6 months of the completion of all project construction activities, the project sponsors shall submit to Port or Planning Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. The final report shall include detailed information required in Section A(5). In addition, reporting shall include the actual amount of renewable diesel fuel used. C. *Certification Statement and On-site Requirements*. Prior to the commencement of construction activities, the project sponsors shall certify through submission of city-standardized forms (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.					
Mitigation Measure M-AQ-1b: Diesel Backup Generator Specifications To reduce NOx associated with operation of the Maximum Commercial or Maximum Residential Scenarios, the project sponsors shall implement the following measures. A. All new diesel backup generators shall: 1. have engines that meet or exceed CARB Tier 4 off-road emission standards which have the lowest NOx emissions of commercially	Project sponsors	Prior to approval of a generator permit by Port Staff.	Anticipated location and engine specifications of a proposed diesel backup generator shall be submitted to the Port Staff for review and approval prior to	Considered complete upon review and approval by Port Staff.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
available generators; and 2. be fueled with renewable diesel, if commercially available, which has been demonstrated to reduce NOx emissions by approximately 10 percent. B. All new diesel backup generators shall have an annual maintenance testing limit of 50 hours, subject to any further restrictions as may be imposed by the BAAQMD in its permitting process. C. For each new diesel backup generator permit submitted to BAAQMD for the project, anticipated location, and engine specifications shall be submitted to the Port Staff for review and approval prior to issuance of a permit for the generator from the San Francisco DBI or the Port. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment and any future replacement of the diesel backup generators shall be required to be consistent with these emissions specifications. The operator of the facility at which the generator is located shall maintain records of the testing schedule for each diesel backup generator for the life of that diesel backup generator and provide this information for review to the Port within 3 months of requesting such information.			issuance of a generator permit.		
Mitigation Measure M-AQ-1c: Use Low and Super-compliant VOC Architectural Coatings in Maintaining Buildings through Covenants Conditions and Restrictions (CC&Rs) and Ground Lease The Project sponsors shall require all developed parcels to include within their CC&R's and/or ground leases requirements for all future interior spaces to be repainted only with "Super-Compliant" Architectural Coatings (http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings). "Low-VOC" refers to paints that meet the more stringent regulatory limits in South Coast AQMD Rule 1113; however, many manufacturers have reformulated to levels well below these limits. These are referred to as "Super-Compliant" Architectural Coatings.	Project sponsors and construction contractor(s).	Project sponsors submit to the Port documentation of CC&R's and/or ground lease requirements prior to building occupancy	Project sponsors to include in CC&R's and/or ground lease requirements with buildings tenants prior to building occupancy.	Considered complete upon project sponsor submittal to the Port of documentation of CC&R's and/or ground lease requirements	Port or Planning Department

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		permit.			
Mitigation Measure M-AQ-1d: Promote use of Green Consumer Products The project sponsors shall provide education for residential and commercial tenants concerning green consumer products. Prior to receipt of any certificate of final occupancy and every five years thereafter, the project sponsors shall work with the San Francisco Department of Environment (SF Environment) to develop electronic correspondence to be distributed by email annually to residential and/or commercial tenants of each building on the project site that encourages the purchase of consumer products that generate lower than typical VOC emissions. The correspondence shall encourage environmentally preferable purchasing and shall include contact information and links to SF Approved. The website may also be used as an informational resource by businesses and residents.	Project sponsors.	Prior to occupancy of the building by tenants and every five years thereafter, project sponsors to distribute educational materials to tenants.	Project sponsors to work with SF Environment to develop educational materials.	Considered complete after distribution of educational materials to residential and commercial tenants.	Port or Planning Department
Mitigation Measure M-AQ-1e: Electrification of Loading Docks The project sponsors shall ensure that loading docks for retail, light industrial or warehouse uses that will receive deliveries from refrigerated transport trucks incorporate electrification hook-ups for transportation refrigeration units to avoid emissions generated by idling refrigerated transport trucks.	Project sponsors	Prior to issuance of a building permit for a building containing loading docks for retail, light industrial or warehouse uses.	Project sponsors to provide construction plans to DBI or the Port to ensure compliance.	Considered complete upon approval of construction plans by DBI or the Port.	Port or Planning Department
Mitigation Measure M-AQ-1f: Transportation Demand Management. The project sponsors shall prepare and implement a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20 percent compared to the total number of daily one-way vehicle trips identified in the project's Transportation Impact Study at project build-out. To ensure that this reduction goal could be reasonably achieved, the TDM Plan will have a monitoring goal of reducing by 20 percent the daily one-way vehicle trips calculated for each building that has received a	Developer to prepare and implement the TDM Plan, which will be implemented by the Transportation Management Association and will	Developer to prepare TDM Plan and submit to Planning Staff prior to approval of the project	Project sponsors to submit the TDM Plan to Planning Staff for review. Transportation Demand Management	The TDM Plan is considered complete upon approval by the Planning Staff. Annual monitoring	Planning Department

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Certificate of Occupancy and is at least 75% occupied compared to the daily one-way vehicle trips anticipated for that building based on anticipated development on that parcel, using the trip generation rates contained within the project's Transportation Impact Study. There shall be a Transportation Management Association that would be responsible for the administration, monitoring, and adjustment of the TDM Plan. The project sponsor is responsible for identifying the components of the TDM Plan that could reasonably be expected to achieve the reduction goal for each new building associated with the project, and for making good faith efforts to implement them. The TDM Plan may include, but is not limited to, the types of measures summarized below for explanatory example purposes. Actual TDM measures selected should include those from the TDM Program Standards, which describe the scope and applicability of candidate measures in detail and include: • Active Transportation: Provision of streetscape improvements to encourage walking, secure bicycle parking, shower and locker facilities for cyclists, subsidized bike share memberships for project occupants, bicycle repair and maintenance services, and other bicycle-related services; • Car-Share: Provision of car-share parking spaces and subsidized memberships for project occupants; • Delivery: Provision of amenities and services to support delivery of goods to project occupants; • Family-Oriented Measures: Provision of on-site childcare and other amenities to support the use of sustainable transportation modes by families; • High-Occupancy Vehicles: Provision of carpooling/vanpooling incentives and shuttle bus service; • Information and Communications: Provision of multimodal	be binding on all development parcels.		Association to submit monitoring report annually to Planning Staff and implement TDM Plan Adjustments (if required).	reports would be on-going during project buildout, or until five consecutive reporting periods show that the project has met its reduction goals, at which point reports would be submitted every three years.	

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wayfinding signage, transportation information displays, and tailored transportation marketing services; • Land Use: Provision of on-site affordable housing and healthy food retail services in underserved areas; • Parking: Provision of unbundled parking, short term daily parking provision, parking cash out offers, and reduced off-street parking supply. The TDM Plan shall include specific descriptions of each measure, including the degree of implementation (e.g., for how long will it be in place), and the population that each measure is intended to serve (e.g. residential tenants, retail visitors, employees of tenants, visitors, etc.). It shall also include a commitment to monitoring of person and vehicle trips traveling to and from the project site to determine the TDM Plan's effectiveness, as outlined below. The TDM Plan shall be submitted to the City to ensure that components of the TDM Plan intended to meet the reduction target are shown on the plans and/or ready to be implemented upon the issuance of each certificate of occupancy. *TDM Plan Monitoring and Reporting*: The Transportation Management Association, through an on-site Transportation Coordinator, shall collect data and make monitoring reports available for review and approval by the Planning Department staff. • Timing: Monitoring data shall be collected and reports shall be submitted to Planning Department staff every year (referred to as "reporting periods"), until five consecutive reporting periods					

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display the fully-built project has met the reduction goal, at which point monitoring data shall be submitted to Planning Department staff once every three years. The first monitoring report is required 18 months after issuance of the First Certificate of Occupancy for buildings that include off-street parking or the establishment of surface parking lots or garages that bring the project's total number of off-street parking spaces to greater than or equal to 500. Each trip count and survey (see below for description) shall be completed within 30 days following the end of the applicable reporting period. Each monitoring report shall be completed within 90 days following the applicable reporting period. The timing shall be modified such that a new monitoring report shall be required 12 months after adjustments are made to the TDM Plan in order to meet the reduction goal, as may be required in the "TDM Plan Adjustments" heading below. In addition, the timing may be modified by the Planning Department as needed to consolidate this requirement with other monitoring and/or reporting requirements for the project. • Components: The monitoring report, including trip counts and surveys, shall include the following components OR comparable alternative methodology and components as approved or provided by Planning Department staff: o Trip Count and Intercept Survey: Trip count and intercept survey of persons and vehicles arriving and leaving the project site for no less than two days of the reporting period between 6:00 a.m. and 8:00 p.m. One day shall be a Tuesday, Wednesday, or Thursday during one week without federally recognized holidays, and another day shall be a Tuesday, Wednesday, or Thursday during another week without federally recognized holidays. The trip count and intercept survey shall be prepared by a qualified transportation or qualified survey consultant and the methodology shall be					

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approved by the Planning Department prior to conducting the components of the trip count and intercept survey. It is anticipated that the Planning Department will have a standard trip count and intercept survey methodology developed and available to project sponsors at the time of data collection. o Travel Demand Information: The above trip count and survey information shall be able to provide travel demand analysis characteristics (work and non-work trip counts, origins and destinations of trips to/from the project site, and modal split information) as outlined in the Planning Department's *Transportation Impact Analysis Guidelines for Environmental Review*, October 2002, or subsequent updates in effect at the time of the survey. o Documentation of Plan Implementation: The TDM Coordinator shall work in conjunction with the Planning Department to develop a survey (online or paper) that can be reasonably completed by the TDM Coordinator and/or TMA staff to document the implementation of TDM program elements and other basic information during the reporting period. This survey shall be included in the monitoring report submitted to Planning Department staff. o Degree of Implementation: The monitoring report shall include descriptions of the degree of implementation (e.g., how many tenants or visitors the TDM Plan will benefit, and on which locations within the site measures will be/have been placed, etc.) o Assistance and Confidentiality: Planning Department staff will assist the TDM Coordinator on questions regarding the components of the monitoring report and shall ensure that the identity of individual survey responders is protected. *TDM Plan Adjustments*. The TDM Plan shall be adjusted based on the					

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monitoring results if three consecutive reporting periods demonstrate that measures within the TDM Plan are not achieving the reduction goal. The TDM Plan adjustments shall be made in consultation with Planning Department staff and may require refinements to existing measures (e.g., change to subsidies, increased bicycle parking), inclusion of new measures (e.g., a new technology), or removal of existing measures (e.g., measures shown to be ineffective or induce vehicle trips). If three consecutive reporting periods' monitoring results demonstrate that measures within the TDM Plan are not achieving the reduction goal, the TDM Plan adjustments shall occur within 270 days following the last consecutive reporting period. The TDM Plan adjustments shall occur until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved. If the TDM Plan does not achieve the reduction goal then the City shall impose additional measures to reduce vehicle trips as prescribed under the development agreement, which may include restriction of additional off-street parking spaces beyond those previously established on the site, capital or operational improvements intended to reduce vehicle trips from the project, or other measures that support sustainable trip making, until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved.					
Mitigation Measure M-AQ-1g: Additional Mobile Source Control Measures The following Mobile Source Control Measures from the BAAQMD's 2010 Clean Air Plan shall be implemented: • Promote use of clean fuel-efficient vehicles through preferential (designated and proximate to entry) parking and/or installation of charging stations beyond the level required by the City's Green Building code, from 8 to 20 percent. • Promote zero-emission vehicles by requesting that any car share program operator include electric vehicles within its car share	Project sponsors and TMA.	On-going.	Project sponsors and TMA to implement measures	On-going.	Port or Planning Department/DBI

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program to reduce the need to have a vehicle or second vehicle as a part of the TDM program that would be required of all new developments.					
Mitigation Measure M-AQ-1h: Offset of Operational Emissions Prior to issuance of the final certificate of occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, the project sponsors, with the oversight of Port Staff, shall either: **(1) Directly fund or implement a specific offset project within San Francisco** to achieve reductions of 25 tons per year of ozone precursors and 1 ton of PM10. This offset is intended to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3. To qualify under this mitigation measure, the specific emissions offset project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements. A preferred offset project would be one implemented locally within the City and County of San Francisco. Prior to implementation of the offset project, the project sponsors must obtain Port Staff's approval of the proposed offset project by providing documentation of the estimated amount of emissions of ROG, NOx, and PM10 to be reduced (tons per year) within the SFBAAB from the emissions reduction project(s). The project sponsors shall notify Port Staff within 6 months of completion of the offset project for verification; or **(2) Pay a one-time mitigation offset fee** to the BAAQMD's Strategic Incentives Division in an amount no less than $18,030 per weighted ton of ozone precursors and PM10 per year above the significance threshold, calculated as the difference between total annual emissions at build out under mitigated conditions and the	Project sponsors.	Offsets for Phase 3/build-out of 1.3 million square feet: Upon completion of construction, and prior to issuance of a Certificate of Occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, developer shall demonstrate to the satisfaction of Port Staff that offsets have been funded or implemented,	Port Staff to approve the proposed offset project.	If project sponsor directly funds or implements a specific offset project, considered complete when Port Staff approves the proposed offset project prior to individual Certificates of Occupancy. If project sponsor pays a one-time mitigation offset fee, considered complete when documentation of payment is provided to Port Staff.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
significance threshold in the EIR air quality analysis, which is 25 tons per year of ozone precursors and 1 ton of PM10, plus a 5 percent administrative fee, to fund one or more emissions reduction projects within the SFBAAB. This one-time fee is intended to fund emissions reduction projects to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3 or after completion of 1.3 million sf of development, whichever comes first. Documentation of payment shall be provided to Port Staff. Acceptance of this fee by the BAAQMD shall serve as an acknowledgment and commitment by the BAAQMD to implement one or more emissions reduction project(s) within 1 year of receipt of the mitigation fee to achieve the emission reduction objectives specified above, and provide documentation to Port Staff and to the project sponsors describing the project(s) funded by the mitigation fee, including the amount of emissions of ROG, NOx, and PM10 reduced (tons per year) within the SFBAAB from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation offset fee following implementation of the emission reduction project(s), the project sponsors shall be entitled to a refund in that amount from the BAAQMD. To qualify under this mitigation measure, the specific emissions retrofit project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements.		or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date. <u>Offsets for subsequent phases/build-out</u>: Upon completion of construction of each subsequent phase, and prior to issuance of a Certificate of Occupancy for the final building associated with such phase, developer shall demonstrate to the satisfaction of Port Staff that offsets			

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		have been funded or implemented, or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date and taking into account offsets previously funded, implemented, and/or purchased.			
Wind and Shadow Mitigation Measures					
Mitigation Measure M-WS-1: Identification and Mitigation of Interim Hazardous Wind Impacts When the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted, the requirements described below apply: **Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies**	Project sponsors, qualified wind consultant.	As outlined in Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies, a wind impact analysis shall be	Qualified wind consultant to prepare a scope of work to be approved by Port Staff and following approval of a scope of work submit a wind impact analysis to Port Staff for approval	Considered complete upon approval or issuance of building permit.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]

Subject Parcel Proposed for Construction	Circumstance or Condition	Related Upwind Parcels
Parcel A	Construction of any new buildings on Parcel A.	NA
Parcel B	Construction of any new buildings on Parcel B.	NA
Parcel E2	Construction of any new buildings on Parcel E2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1 and G
Parcel E3	Construction of any new buildings on Parcel E3 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building	Parcels E2 and G

	prepared for the listed circumstances prior to issuance of a building permit for any proposed building when the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted.	of feasible design changes to minimize interim hazardous wind impacts.			

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	Schematic Design submittal.						
Parcel F	Construction of any new buildings on Parcel F.	NA					
Parcel G	Construction of any new buildings on Parcel G.	NA					
Parcel H1	Construction of any new buildings on Parcel H1 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels E2 and G					
Parcel H2	Construction of any new buildings on Parcel H2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1, E2, and E3 that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1, E2, and E3					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
Source: SWCA. **Requirements** A wind impact analysis shall be required prior to building permit issuance for any proposed new building that is located within the project site and meets the conditions described above. All feasible means (e.g., changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, adding architectural canopies or screens, or street furniture) to eliminate hazardous winds, if predicted, shall be implemented. After such design changes and features have been considered, the additional effectiveness of landscaping may also be considered. 1. Screening-level analysis. A qualified wind consultant approved by Port Staff shall review the proposed building design and conduct a "desktop review" in order to provide a qualitative result determining whether there could be a wind hazard. The screening-level analysis shall have the following steps: For each new building proposed that meets the criteria above, a qualified wind consultant shall review and compare the exposure, massing, and orientation of the proposed building(s) on the subject parcel to the building(s) on the same parcel in the representative massing models of the Proposed Project tested in the wind tunnel as part of this EIR and in any subsequent wind analysis testing required by this mitigation measure. The wind consultant shall identify and compare the potential impacts of the proposed building(s) to those identified in this EIR, subsequent wind testing that may have occurred under this mitigation measure, and to the City's wind hazard criterion. The wind consultant's analysis and evaluation shall consider the proposed building(s) in the context of the "Current Project Baseline," which, at any given time during construction of the Proposed Project, shall be defined as any existing buildings at the site, the as-built designs of all previously-completed structures and the then-current designs of					

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approved but yet unbuilt structures that would be completed by the time of occupancy of the subject building. (a) If the qualified wind consultant concludes that the building design(s) could not create a new wind hazard and could not contribute to a wind hazard identified by prior wind tunnel testing for the EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If there could be a new wind hazard, then a quantitative assessment shall be conducted using wind tunnel testing or an equivalent quantitative analysis that produces comparable results to the analysis methodology used in this EIR. (b) If the qualified wind consultant concludes that the building design(s) could create a new wind hazard or could contribute to a wind hazard identified by prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, but in the consultant's professional judgment the building(s) can be modified to reduce such impact to a less-than-significant level, the consultant shall notify Port Staff and the building applicant. The consultant's professional judgment may be informed by the use of "desktop" analytical tools, such as computer tools relying on results of prior wind tunnel testing for the Proposed Project and other projects (i.e., "desktop" analysis does not include new wind tunnel testing). The analysis shall include consideration of wind location, duration, and speed of wind. The building applicant may then propose changes or supplements to the design of the proposed building(s) to achieve this result. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting to include podiums and roof terraces, and/or the addition of architectural canopies or screens, or					

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street furniture. The effectiveness of landscaping may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design and landscaping for the building(s) could not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. (c) If the consultant is unable to demonstrate to the satisfaction of Port Staff that no increase in wind hazards would occur, wind tunnel testing or an equivalent method of quantitative evaluation producing results that can be compared to those used in the EIR and in any subsequent wind analysis testing required by this mitigation measure is required. The building(s) shall be wind tunnel tested in the context of a model that represents the Current Project Baseline, as described in Item 1, above. The testing shall include all the test points in the vicinity of a proposed building or group of buildings that were tested in this EIR, as well as all additional points deemed appropriate by the consultant to determine the wind performance for the building(s). Testing shall occur in places identified as important, e.g., building entrances, sidewalks, etc., and there may need to be additional test point locations considered. At the direction and approval of the Port, the "vicinity" shall be determined by the wind consultant, as appropriate for the circumstances, e.g., a starting concept for "vicinity" could be approximately 350 feet around the perimeter of the subject parcel(s), subject to the wind consultant's reducing or increasing this radial distance. The wind tunnel testing shall test the proposed building design(s), as well as the Current Project Baseline, in					

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order to clearly identify those differences that would be due to the proposed new building(s). In the event the wind tunnel testing determines that design of the building(s) would increase the hours of wind hazard or extent of area subject to hazardous winds beyond those identified in prior wind testing conducted for this EIR and in subsequent wind tunnel analysis required by this mitigation measure, the wind consultant shall notify Port Staff and the building applicant. The building applicant may then propose changes or supplements to the design of the proposed building(s) to eliminate wind hazards. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting building(s) to include podiums and roof terraces, adding architectural canopies or screens, or street furniture. All feasible means (changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, the addition of architectural canopies or screens, or street furniture) to eliminate wind hazards, if predicted, shall be implemented to the extent necessary to mitigate the impact. After such design changes and features have been considered, the additional effectiveness of landscaping at the size it is proposed to be installed may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design would not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If the proposed building(s) would result in a wind hazard exceedance, and the only way to eliminate the hazard is to redesign a proposed building, then the building shall be redesigned.					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
Mitigation Measure M-WS-2: Wind Reduction for Rooftop Winds If the rooftop of building(s) is proposed as public open space and/or a passive or active public recreational area prior to issuance of a building permit for the subject building(s), a qualified wind consultant shall prepare a wind impact and mitigation analysis in the context of the Current Project Baseline regarding the proposed architectural design. All feasible means (such as changing the proposed building mass or design; raising the height of the parapets to at least 8 feet, using a porous material where such material would be effective in reducing wind speeds; using localized wind screens, canopies, trellises, and/or landscaping around seating areas) to eliminate wind hazards shall be implemented as necessary. A significant wind impact would be an increase in the number of hours that the wind hazard criterion is exceeded or an increase in the area subjected to winds exceeding the hazard criterion as compared to existing conditions at the height of the proposed rooftop. The wind consultant shall demonstrate to the satisfaction of Port Staff that the building design would not create a new wind hazard or contribute to a wind hazard identified in prior wind testing conducted for this EIR.	Project Sponsors and qualified wind consultant.	Prior to issuance of a building permit for a building with a rooftop proposed as public open space and/or passive/active recreational area, the qualified wind consultant shall demonstrate that no new wind hazards or a contribution to a wind hazard identified in the EIR would occur in a wind hazard and mitigation analysis.	Port Staff to review wind hazard and mitigation analysis.	Considered complete upon approval or issuance of building permit	Port
Biological Resources Mitigation Measures					
Mitigation Measure M-BI-1a: Worker Environmental Awareness Program Training Project-specific Worker Environmental Awareness Program (WEAP) training shall be developed and implemented by a qualified biologist* and attended by all project personnel performing demolition or ground-disturbing work prior to beginning demolition or ground-disturbing work on site for	Project sponsors and qualified project biologist.	Prior to demolition or ground-disturbing activities.	Port staff to review and approve WEAP training. Project sponsors and qualified biological consultant to document WEAP	Considered complete after Port staff reviews and approves WEAP training, and confirm	Port or Planning Department

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each construction phase. The WEAP training shall include, but not be limited to, education about the following: a. Applicable State and Federal laws, environmental regulations, project permit conditions, and penalties for non-compliance. b. Special-status plant and animal species with the potential to be encountered on or in the vicinity of the project site during construction. c. Avoidance measures and a protocol for encountering special-status species including a communication chain. d. Preconstruction surveys and biological monitoring requirements associated with each phase of work and at specific locations within the project site (e.g., shoreline work) as biological resources and protection measures will vary depending on where work is occurring within the site, time of year, and construction activity. e. Known sensitive resource areas in the project vicinity that are to be avoided and/or protected as well as approved project work areas, access roads, and staging areas. Best management practices (BMPs) (e.g., straw wattles or spill kits) and their location around the project site for erosion control and species exclusion, in addition to general housekeeping requirements. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.			training and provide documentation during annual mitigation report to the Port.	compliance in annual mitigation report.	
Mitigation Measure M-BI-1b: Nesting Bird Protection Measures The project site's proximity to San Francisco Bay and its current lack of	Project sponsors, qualified biological consultant.	Prior to issuance of demolition or building	If construction will occur during nesting season, qualified biological consultant to	Considered complete upon issuance of demolition or	Port or Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
activity result in a more attractive environment for birds to nest than other San Francisco locations (e.g., the Financial District) that have higher levels of site activity and human presence. Nesting birds and their nests shall be protected during construction by implementation of the following measures for each construction phase: a. To the extent feasible, conduct initial activities including, but not limited to, vegetation removal, tree trimming or removal, ground disturbance, building demolition, site grading, and other construction activities which may compromise breeding birds or the success of their nests (e.g., CRF, rock drilling, rock crushing, or pile driving), outside of the nesting season (January 15–August 15). b. If construction during the bird nesting season cannot be fully avoided, a qualified wildlife biologist* shall conduct pre-construction nesting surveys within 14 days prior to the start of construction or demolition at areas that have not been previously disturbed by project activities or after any construction breaks of 14 days or more. Surveys shall be performed for suitable habitat within 250 feet of the project site in order to locate any active passerine (perching bird) nests and within 500 feet of the project site to locate any active raptor (birds of prey) nests, waterbird nesting pairs, or colonies. c. If active nests are located during the preconstruction bird nesting surveys, a qualified biologist shall evaluate if the schedule of construction activities could affect the active nests and if so, the following measures would apply: i. If construction is not likely to affect the active nest, construction may proceed without restriction; however, a qualified biologist shall regularly monitor the nest at a frequency determined appropriate for the surrounding construction activity to confirm there is no adverse effect. Spot-check monitoring frequency		permits for construction during the nesting season (January 15 to August 15) ~~(August 16 – January 14)~~	conduct bat surveys and present results to Port Staff	building permits for construction	

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would be determined on a nest-by-nest basis considering the particular construction activity, duration, proximity to the nest, and physical barriers which may screen activity from the nest. The qualified biologist may revise his/her determination at any time during the nesting season in coordination with the Port of San Francisco or Planning Department. ii. If it is determined that construction may affect the active nest, the qualified biologist shall establish a no-disturbance buffer around the nest(s) and all project work shall halt within the buffer until a qualified biologist determines the nest is no longer in use. Typically, these buffer distances are 250 feet for passerines and 500 feet for raptors; however, the buffers may be adjusted if an obstruction, such as a building, is within line-of-sight between the nest and construction. iii. Modifying nest buffer distances, allowing certain construction activities within the buffer, and/or modifying construction methods in proximity to active nests shall be done at the discretion of the qualified biologist and in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Necessary actions to remove or relocate an active nest(s) shall be coordinated with the Port of San Francisco or Planning Department and approved by CDFW. iv. Any work that must occur within established no-disturbance buffers around active nests shall be monitored by a qualified biologist. If adverse effects in response to project work within the buffer are					

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observed and could compromise the nest, work within the no-disturbance buffer(s) shall halt until the nest occupants have fledged. v. Any birds that begin nesting within the project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels, so exclusion zones around nests may be reduced or eliminated in these cases as determined by the qualified biologist in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Work may proceed around these active nests as long as the nests and their occupants are not directly impacted. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-2: Avoidance and Minimization Measures for Bats A qualified biologist (as defined by CDFW*) who is experienced with bat surveying techniques (including auditory sampling methods), behavior, roosting habitat, and identification of local bat species shall be consulted prior to demolition or building relocation activities to conduct a pre-construction habitat assessment of the project site (focusing on buildings to be demolished or relocated) to characterize potential bat habitat and identify potentially active roost sites. No further action is required should the pre-construction habitat assessment not identify bat habitat or signs of potentially active bat roosts within the project site (e.g., guano, urine staining, dead bats, etc.).	Project sponsors, qualified biological consultant, and CDFW.	Prior to issuance of demolition or building permits when trees or shrubs would be removed or buildings demolished as part of an individual project.	Qualified biological consultant to conduct bat surveys and present results to Port Staff.	Considered complete upon issuance of demolition or building permits.	Port or Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
The following measures shall be implemented should potential roosting habitat or potentially active bat roosts be identified during the habitat assessment in buildings to be demolished or relocated under the Proposed Project or in trees adjacent to construction activities that could be trimmed or removed under the Proposed Project: a) In areas identified as potential roosting habitat during the habitat assessment, initial building demolition, relocation, and any tree work (trimming or removal) shall occur when bats are active, approximately between the periods of March 1 to April 15 and August 15 to October 15, to the extent feasible. These dates avoid the bat maternity roosting season and period of winter torpor. [Torpor refers to a state of decreased physiological activity with reduced body temperature and metabolic rate.] b) Depending on temporal guidance as defined below, the qualified biologist shall conduct pre-construction surveys of potential bat roost sites identified during the initial habitat assessment no more than 14 days prior to building demolition or relocation, or any tree trimming or removal. c) If active bat roosts or evidence of roosting is identified during pre-construction surveys, the qualified biologist shall determine, if possible, the type of roost and species. A no-disturbance buffer shall be established around roost sites until the qualified biologist determines they are no longer active. The size of the no-disturbance buffer would be determined by the qualified biologist and would depend on the species present, roost type, existing screening around the roost site (such as dense vegetation or a building), as well as the type of construction activity that would occur around the roost site. d) If special-status bat species or maternity or hibernation roosts are detected during these surveys, appropriate species- and roost-specific avoidance and protection measures shall be					

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developed by the qualified biologist in coordination with CDFW. Such measures may include postponing the removal of buildings or structures, establishing exclusionary work buffers while the roost is active (e.g., 100-foot no-disturbance buffer), or other compensatory mitigation. e) The qualified biologist shall be present during building demolition, relocation, or tree work if potential bat roosting habitat or active bat roosts are present. Buildings and trees with active roosts shall be disturbed only under clear weather conditions when precipitation is not forecast for three days and when daytime temperatures are at least 50 degrees Fahrenheit. f) The demolition or relocation of buildings containing or suspected to contain bat roosting habitat or active bat roosts shall be done under the supervision of the qualified biologist. When appropriate, buildings shall be partially dismantled to significantly change the roost conditions, causing bats to abandon and not return to the roost, likely in the evening and after bats have emerged from the roost to forage. Under no circumstances shall active maternity roosts be disturbed until the roost disbands at the completion of the maternity roosting season or otherwise becomes inactive, as determined by the qualified biologist. g) Trimming or removal of existing trees with potential bat roosting habitat or active (non-maternity or hibernation) bat roost sites shall follow a two-step removal process (which shall occur during the time of year when bats are active, according to a) above, and depending on the type of roost and species present, according to c) above). i. On the first day and under supervision of the qualified biologist, tree branches and limbs not containing cavities or fissures in which bats could roost shall be cut using chainsaws.					

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ii. On the following day and under the supervision of the qualified biologist, the remainder of the tree may be trimmed or removed, either using chainsaws or other equipment (e.g., excavator or backhoe). All felled trees shall remain on the ground for at least 24 hours prior to chipping, off-site removal, or other processing to allow any bats to escape, or be inspected once felled by the qualified biologist to ensure no bats remain within the tree and/or branches. iv. * CDFW defines credentials of a "qualified biologist" within permits or authorizations issued for a project. Typical qualifications include a minimum of five years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-3: Pile Driving Noise Reduction for Protection of Fish and Marine Mammals Prior to the start of reconstruction of the bulkhead in Reach II, the project sponsors shall prepare a detailed Construction Plan that outlines the details of the piling installation approach. This Plan shall be reviewed and approved by Port Staff. The information provided in this plan shall include, but not be limited to, the following: • The type of piling to be used (whether sheet pile or H-pile); • The piling size to be used; • The method of pile installation to be used; • Noise levels for the type of piling to be used and the method of pile driving; • Recalculation of potential underwater noise levels that could be generated during pile driving using methodologies outlined in	Project sponsors.	Prior to construction of the bulkhead in Reach II, project sponsors to prepare a Construction Plan.	Project sponsors to prepare a Construction Plan and submit it to the Port for review and approval. If determined necessary, sound attenuation and monitoring plan would then be developed. Results of the vibration monitoring would be provided to NOAA if required. An alternative to the sound	Considered complete upon review and approval of the Construction Plan. If determined necessary, approval of the sound attenuation and monitoring plan would be required by Port Staff, and monitoring results would be provided to	Port

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CalTrans 2009 [Caltrans, Technical Guidance for Assessment and Mitigation]; and • When pile driving is to occur. If the results of the recalculations provided in the detailed Construction Plan for pile driving discussed above indicate that underwater noise levels are less than 183 dB (SEL) for fish at a distance of 33 feet (less than or equal to 10 meters) and 160 dB (RMS) sound pressure level or 120 dB (RMS) re 1 µPa impulse noise level for marine mammals for a distance 1,640 feet (500 meters), then no further measures are required to mitigate underwater noise. If recalculated noise levels are greater than those identified above, then the project sponsors shall develop a sound attenuation reduction and monitoring plan. This plan shall be reviewed and approved by Port Staff. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile-driving activities, and all BMPs to be taken to reduce impact hammer pile-driving sound in the marine environment to an intensity level of less than 183 and 160/120 dB (as identified above) at distances of 33 feet (less than or equal to 10 meters) for fish and 1,640 feet (500 meters) for marine mammals. The sound-monitoring results shall be made available to NOAA Fisheries. If, in the case of marine mammals, recalculated noise levels are greater than 160 dB (peak) at less than or equal to 1,640 feet (500 meters), then the project sponsors shall consult with NOAA to determine the need to obtain an Incidental Harassment Authorization (IHA) under the MMPA. If an IHA is required by NOAA, an application for an IHA shall be prepared by the project sponsors. The plan shall incorporate as appropriate, but not be limited to, the following BMPs: • Any impact-hammer-installed soldier wall H-pilings or sheet piling shall be conducted in strict accordance with the Long-Term Management Strategy (LTMS) work windows for Pacific herring,* during which the presence of Pacific herring in the project site is			attenuation and monitoring plan is to consult with NOAA and provide evidence to the satisfaction of Port Staff.	NOAA.	

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expected to be minimal unless, where applicable, NOAA Fisheries in their Section 7 consultation with the Corps determines that the potential effect to special-status fish species is less than significant. • If pile installation using impact hammers must occur at times other than the approved LTMS work window for Pacific herring or result in underwater sound levels greater than those identified above, the project sponsors shall consult with both NOAA Fisheries and CDFW on the need to obtain incidental take authorizations to address potential impacts to longfin smelt and green sturgeon associated with reconstruction of the steel sheet pile bulkhead in Reach II, and to implement all requested actions to avoid impacts. • A 1,640-foot (500-meter) safety zone shall be established and maintained around the sound source to the extent such a safety zone is located within in-water areas, for the protection of marine mammals in the event that sound levels are unknown or cannot be adequately predicted. • In-water work activities associated with reconstruction of the steel sheet pile bulkhead in Reach II shall be halted when a marine mammal enters the 1,640-foot (500-meter) safety zone and shall cease until the mammal has been gone from the area for a minimum of 15 minutes. • A "soft start" technique shall be used in all pile driving, giving marine mammals an opportunity to vacate the area. • A NOAA Fisheries-approved biological monitor shall conduct daily surveys before and during impact hammer pile driving to inspect the safety zone and adjacent San Francisco Bay waters for marine mammals. The monitor shall be present as specified by NOAA Fisheries during the impact pile-driving phases of construction.					

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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• Other BMPs shall be implemented as necessary, such as using bubble curtains or an air barrier, to reduce underwater noise levels to acceptable levels. Alternatively, the project sponsors may consult with NOAA directly and submit evidence to their satisfaction of Port Staff of NOAA consultation. In such case, the project sponsors shall comply with NOAA recommendations and/or requirements. * U.S. Army Corps of Engineers, Programmatic Essential Fish Habitat (EFH) Assessment for the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region. July 2009.					
Mitigation Measure M-BI-4: Compensation for Fill of Jurisdictional Waters To offset temporary and/or permanent impacts to jurisdictional waters of San Francisco Bay adjacent to the 28-Acre Site, construction associated with repair or replacement of the Reach II bulkhead shall be conducted as required by regulatory permits (i.e., those issued by the Corps, RWQCB, and BCDC) and in coordination with NMFS as appropriate. If required by regulatory permits, compensatory mitigation shall be provided as necessary, at a minimum ratio of 1:1 for fill beyond that required for normal repair and maintenance of existing structures. Compensation may include on-site or off-site shoreline improvements or intertidal/subtidal habitat enhancements along San Francisco's eastern waterfront through removal of chemically treated wood material (e.g., pilings, decking, etc.) by pulling, cutting, or breaking off piles at least 1 foot below mudline or removal of other unengineered debris (e.g., concrete-filled drums or large pieces of concrete). Improvements would be implemented in accordance with NMFS as appropriate. On-site or off-site restoration/enhancement plans, if required, must be prepared by a qualified biologist prior to construction and approved by the permitting agencies prior to beginning construction, repair, or	Project sponsors. In accordance with regulatory permits and coordination with NMFS, compensatory mitigation, if required, shall be provided at a minimum ratio of 1:1.	Prior to any construction at the Reach II bulkhead or in accordance with regulatory permits.	Project sponsors to comply with regulatory permits	Considered complete after issuance of regulatory permits for the fill of jurisdictional waters.	Port

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replacement of the Reach II bulkhead. Implementation of restoration/enhancement activities by the permittee shall occur prior to project impacts, whenever possible.					
Geology and Soils Mitigation Measures					
Mitigation Measure M-GE-3a: Reduction of Rock Fall Hazards The project sponsors shall prepare a site-specific geotechnical report(s), subject to review and approval by the Port, that evaluates the design and construction methods proposed for Parcels PKS, C-1, and C-2, the Irish Hill playground, and 21st Street. The investigations shall determine the potential for rock fall hazards. If the potential for rock fall hazards is identified, the site-specific geotechnical investigations shall identify measures to minimize such hazards to be implemented by the project sponsors. Possible measures to reduce the impacts of potential rock fall hazards include, but are not limited to, the following: • Limited regrading to adjust slopes to stable gradient; • Rock fall containment measures such as installation of drape nets, rock fall catchment fences, or diversion dams; and • Site design measures such as implementing setbacks to ensure that buildings and public uses are outside areas that could be subject to damage as a result of rock fall.	Project sponsors.	Prior to the start of construction activities at Parcels PKS, C-1, C-2, the Irish Hill playground, and 21st Street.	Project sponsors to submit geotechnical report(s) to the Port for review and approval.	Considered complete upon approval of geotechnical report(s) and any associated measures to minimize rock fall hazards.	Port
Mitigation Measure M-GE-3b: Signage and Restricted Access to Pier 70 Prior to issuance of the first certificate of occupancy under the Proposed Project, the project sponsors shall install a gate or an equivalent measure to prevent access to the existing dilapidated pier at the project site. A sign shall be posted at the potential access point informing the public of potential risks associated with use of the structure and prohibiting public access.	Project sponsors to install signage and gate or equivalent measure to prevent access to the existing dilapidated pier.	Prior to issuance of the first Certificate of Occupancy.	Project sponsors to document installation of signage and gate or equivalent measure	Considered complete upon installation of the signage and gate or equivalent measure. The measure will be documented in the annual	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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				mitigation and monitoring report.	
Mitigation Measure M-GE-6: Paleontological Resources Monitoring and Mitigation Program Prior to issuance of a building permit for construction activities that would disturb sedimentary rocks of the Franciscan Complex (based on the site-specific geotechnical investigation or other available information), the project sponsors shall retain the services of a qualified paleontological consultant having expertise in California paleontology to design and implement a Paleontological Resources Monitoring and Mitigation Program (PRMMP). The PRMMP shall specify the timing and specific locations where construction monitoring would be required; emergency discovery procedures; sampling and data recovery procedures; procedures for the preparation, identification, analysis, and curation of fossil specimens and data recovered; preconstruction coordination procedures; and procedures for reporting the results of the monitoring program. The PRMMP shall be consistent with the Society for Vertebrate Paleontology (SVP) Standard Guidelines for the mitigation of construction-related adverse impacts to paleontological resources and the requirements of the designated repository for any fossils collected. During construction, earth-moving activities that have the potential to disturb previously undisturbed native sediment or sedimentary rocks shall be monitored by a qualified paleontological consultant having expertise in California paleontology. Monitoring need not be conducted for construction activities in areas where the ground has been previously disturbed or when construction activities would encounter artificial fill, Young Bay Mud, marsh deposits, or non-sedimentary rocks of the Franciscan Complex. If a paleontological resource is discovered, construction activities in an appropriate buffer around the discovery site shall be suspended for a maximum of 4 weeks. At the direction of the Environmental Review Officer	Project sponsors and qualified paleontological consultant.	Prior to issuance of a building permit where construction activities would disturb sedimentary rocks of the Franciscan complex. If earth-moving activities have the potential to disturb previously undisturbed native sediment, a qualified paleontological consultant would monitor the activities.	Qualified paleontological consultant to prepare a PRMMP for review and approval by the ERO A single PRMMP or multiple PRMMPs may be produced to address project phasing. In compliance with the requirements of the PRMMP, a qualified paleontological consultant would monitor construction and provide a monitoring report for inclusion in the annual mitigation and monitoring report.	Considered complete upon documentation to the satisfaction of that building permit construction activities would not disturb sedimentary rocks of the Franciscan Complex, or review and approval of the PRMMP, if required, by the Planning Department. Monitoring activities and compliance would be documented in the annual mitigation and monitoring report.	Port and Planning Department

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(ERO), the suspension of construction can be extended beyond 4 weeks if needed to implement appropriate measures in accordance with the PRMMP, but only if such a suspension is the only feasible means to prevent an adverse impact on the paleontological resource. The paleontological consultant's work shall be conducted at the direction of the City's ERO. Plans and reports prepared by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.					
Hydrology and Water Resources Mitigation Measures					
Mitigation Measure M-HY-2a: Design and Construction of Proposed Pump Station for Options 1 and 3 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline, the Proposed Project at full build-out, and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to	Project sponsors.	Prior to construction of the proposed pump station for Options 1 and 3.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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approval by the SFPUC.					
Mitigation Measure M-HY-2b: Design and Construction of Proposed Pump Station for Option 2 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; • During wet weather, wastewater flows from the project site shall bypass the wet-weather facilities and be conveyed to the combined sewer system in such a manner that they do not contribute to combined sewer discharges within the 20th Street sub-basin; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to approval by the SFPUC.	Project sponsors.	Prior to construction of the proposed pump station for Option 2.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC
Hazards and Hazardous Materials Mitigation Measures					
Mitigation Measure M-HZ-2a: Conduct Transformer Survey and Remove PCB Transformers	Project sponsors and qualified contractor.	Prior to the demolition, renovation, or	Qualified contractor to survey and determine the	Considered complete if no PCBs found or	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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The project sponsors shall retain a qualified contractor to survey any building and/or structure planned for demolition, renovation, or relocation to identify all electrical transformers in use and in storage. The contractor shall determine the PCB content using name plate information, or through sampling if name-plate data do not provide adequate information regarding the PCB content of the dielectric equipment. The project sponsors shall retain a qualified contractor to remove and dispose of all transformers in accordance with the requirements of Title 40 of the Code of Federal Regulations, Section 761.60 (described under the Regulatory Framework) and the Title 22 of the California Code of Regulations, Section 66261.24. The removal shall be completed in advance of any building or structural demolition, renovation, or relocation.		relocation of any building and/or structure.	PCB content of transformers in use and storage. If necessary, the contractor shall remove and dispose of transformers in accordance with applicable regulations.	upon appropriate disposal and removal of transformers. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	
Mitigation Measure M-HZ-2b: Conduct Sampling and Cleanup if Stained Building Materials Are Observed In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB (determined in accordance with Mitigation Measure H-HZ-2a), or the leakage has resulted in visible staining of the building materials or surrounding surface areas, the project sponsors shall retain a qualified professional to obtain samples of the building materials for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration of 1 part per million, then the project sponsors shall retain a contractor to clean the surface to a concentration of 1 part per million or less in accordance with Title 40 of the Code of Federal Regulations, Section 761.61(a). The sampling and cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB, or the leakage has resulted in visible staining of the building materials or surrounding surface areas. If determined necessary, sampling and	If leakage or spillage occurs, qualified contractor to obtain samples and clean the surface (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
		cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.			
Mitigation Measure M-HZ-2c: Conduct Soil Sampling if Stained Soil is Observed In the event that leakage is observed in the vicinity of a PCB-containing transformer that has resulted in visible staining of the surrounding soil (determined in accordance with Mitigation Measure M-HZ-2a), the project sponsors shall retain a qualified professional to obtain soil samples for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration less than the residential Environmental Screening Level of 0.22 milligrams per kilogram, then no further action shall be required. If PCBs are identified at a concentration greater than or equal to the residential Environmental Screening Level of 0.22 milligrams per kilogram, then the project sponsors shall require the contractor to implement the requirements of the Pier 70 RMP, as required by Mitigation Measure M-HZ-6. The sampling and implementation of the Pier 70 RMP requirements shall be completed in advance of any building or structural demolition, renovation, relocation, or subsequent development.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer, or the leakage has resulted in visible staining of soils. If determined necessary, sampling and removal shall be completed in advance of any building or structural demolition, renovation, or relocation.	If leakage or spillage occurs, qualified contractor to obtain samples and remove any PCBs (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented hazardous materials manifestos and in the annual mitigation and monitoring report.	Port
Mitigation Measure M-HZ-3a: Implement Construction and Maintenance-Related Measures of the Pier 70 Risk Management Plan The project sponsors shall provide notice to the RWQCB, DPH, and Port in accordance with the Pier 70 RMP, in advance of ground-disturbing activities	Project sponsors and construction contractor(s).	Notice shall be provided to the RWQCB, DPH, and Port in accordance	All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB,	Considered complete upon notice to the RWQCB, DPH, and Port.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
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that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover (Pier 70 RMP Sections 4.1, 4.2, and 6.3).
 	
The project sponsors shall also (through their contractor) implement the following measures of the Pier 70 RMP during construction to provide for the protection of worker and public health, including nearby schools and other sensitive receptors, and to ensure appropriate disposition of soil and groundwater removed from the site:
 	
• A project-specific health and safety plan (Pier 70 RMP Section 6.4);
 	
• Access controls (Pier 70 RMP Section 6.1);
 	
• Soil management protocols, including those for:
  ○ soil movement (Pier 70 RMP Section 6.5.1),
  ○ soil stockpile management (Pier 70 RMP Section 6.5.2), and
  ○ import of clean soil (including preparation of a project-specific Soil Import Plan) (Pier 70 RMP Section 6.5.3);
 	
• A dust control plan in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code and other applicable regulations as well as site-specific measures (Pier 70 RMP Section 6.6);
 	
• A project-specific stormwater pollution prevention control plan (Pier 70 RMP Section 6.7);
 	
• Off-site soil disposal (Pier 70 RMP Section 6.8);
		with the Pier 70 RMP prior to any ground-disturbing activities that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover.	DPH, and Port for review and approval in accordance with the notification requirements of the RMP.		

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
• A project-specific groundwater management plan for temporary dewatering (Pier 70 RMP Section 6.10.1); • Risk management measures to minimize the potential for new utilities to become conduits for the spread of groundwater contamination (Pier 70 RMP Section 6.10.2); • Appropriate design of underground pipelines to prevent the intrusion of groundwater or degradation of pipeline construction materials by chemicals in the soil or groundwater (Pier 70 RMP Section 6.10.3); and • Protocols for unforeseen conditions (Pier 70 RMP Section 6.9). Following completion of construction activities that disturb any durable cover, the integrity of the previously existing durable cover shall be re-established in accordance with Section 6.2 of the Pier 70 RMP and the protocols described in the Operations and Maintenance Plan of the Pier 70 RMP. All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB, DPH, and/or Port for review and approval in accordance with the notification requirements of the RMP (Pier 70 RMP Section 4.0).					
Mitigation Measure M-HZ-3b: Implement Well Protection Requirements of the Pier 70 Risk Management Plan In accordance with Section 6.11 of the Pier 70 RMP, the project sponsors shall review available information prior to any ground-disturbing activities to identify any monitoring wells within the construction area, including any wells installed by PG&E in support of investigation and remediation of the PG&E Responsibility Area within the 28-Acre Site. The wells shall be appropriately protected during construction. If construction necessitates destruction of an existing well, the destruction shall be conducted in accordance with California and DPH well abandonment regulations, and	Project sponsors	Prior to ground-disturbing activities.	Project sponsors to identify any monitoring wells in the area, and appropriately protect them. If destruction of a well is required, it would be conducted in accordance with	Monitoring complete if no wells or activities would be demonstrated in RWQCB and DPH regulatory applications and documented in the annual mitigation and	Port

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must be approved by the RWQCB. The Port shall also be notified of the destruction. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.			applicable regulations and the Port would be notified. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.	monitoring report.	
Mitigation Measure M-HZ-4: Implement Construction-Related Measures of the Hoedown Yard Site Management Plan In accordance with the notification requirements of the Hoedown Yard SMP (Section 4.2), the project sponsors (through their contractor) shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard. During construction, the contractor shall implement the following measures of the Hoedown Yard SMP to provide for the protection of worker and public health, and to ensure appropriate disposition of soil and groundwater. • A project-specific Health and Safety Plan (Hoedown Yard SMP Section 5): o Dust management measures in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code. The specific measures must address	Project sponsors	Prior to ground-disturbing activities at the Hoedown Yard.	The project sponsors shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard.	Considered complete after notification to the RWQCB, DPH, and/or Port.	DPH

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
dust control (SMP Section 6.1) and dust monitoring (SMP Section 6.2). • Soil and water management measures, including: o soil handling (Hoedown Yard SMP Section 7.1.1), o stockpile management (Hoedown Yard SMP Section 7.1.2), o on-site reuse of soil (Hoedown Yard SMP Section 7.1.3), o off-site soil disposal (Hoedown Yard SMP Section 7.1.4), o excavation dewatering (Hoedown Yard SMP Section 7.1.5), o stormwater management (Hoedown Yard SMP Section 7.1.6), o site access and security (Hoedown Yard SMP Section 7.1.7), and o unanticipated subsurface conditions (Hoedown Yard SMP Section 7.2).					
Mitigation Measure M-HZ-5: Delay Development on Proposed Parcels H1, H2, and E3 Until Remediation of the PG&E Responsibility Area is Complete The project sponsors shall not start construction of the proposed development or associated infrastructure on proposed Parcel H1, H2, and E3 until PG&E's remedial activities in the PG&E Responsibility Area within and adjacent to these parcels have been completed to the satisfaction of the RWQCB, consistent with the terms of the remedial action plan prepared by PG&E and approved by RWQCB. During subsequent development, the project sponsors shall implement the requirements of the Pier 70 RMP within the PG&E Responsibility Area, as enforced through the recorded deed restriction on the Pier 70 Master Plan Area.	Project sponsors and PG&E.	Prior to the start of construction on proposed Parcels H1, H2, and E3. During subsequent development, for implementation of Pier 70 RMP Requirements.	PG&E to complete remedial activities in the PG&E Responsibility Area within and adjacent to Parcels H1, H2, and E3 to satisfaction of RWQCB. Project sponsor to implement Pier 70 RMP requirements, enforced by recorded deed	Considered complete upon RWQCB confirmation of satisfaction with PG&E remedial action.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
			restriction.		
Mitigation Measure M-HZ-6: Additional Risk Evaluations and Vapor Control Measures for Residential Land Uses The notification submittals required under Mitigation Measure M-HZ-3a shall describe site conditions at the time of development. If residential land uses are proposed at or near locations where soil vapor or groundwater concentrations exceed residential cleanup standards for vapor intrusion (based on information provided in the Pier 70 RMP), this information shall be included in the notification submittal and the RWQCB and DPH determine whether a risk evaluation is required. If required, the project sponsors or future developer(s) shall conduct a risk evaluation in accordance with the Pier 70 RMP. The risk evaluation shall be based on the soil vapor and groundwater quality presented in the Pier 70 RMP and the proposed building design. The project sponsors shall conduct additional soil vapor or groundwater sampling as needed to support the risk evaluation, subject to the approval of the RWQCB and DPH. If the risk evaluation demonstrates that there would be unacceptable health risks to residential users (i.e., greater than 1×10^{-6} incremental cancer risk or a non-cancer hazard index greater than 1), the project sponsors shall incorporate measures into the building design to minimize or eliminate exposure to soil vapor through the vapor intrusion pathway, subject to review and approval by the RWQCB and DPH. Appropriate vapor intrusion measures include, but are not limited to design of a safe building configuration that would preclude vapor intrusion; installation of a vapor barrier; and/or design and installation of an active vapor monitoring and extraction system. If the risk evaluation demonstrates that vapor intrusion risks would be within acceptable levels (less than 1×10^{-6} incremental cancer risk or a non-cancer hazard index less than 1) under a project-specific development scenario, no additional action shall be required. (For instance, the project sponsors could locate all residential uses above the first floor which, in some cases, could eliminate the potential for residential exposure to organic compounds in soil	Project sponsors	Prior to ground-disturbing activities of residential land uses if near locations where soil vapor or groundwater concentrations exceed residential cleanup standard for vapor intrusion.	Site conditions shall be recorded by the project sponsors and included in the notification submittal to the RWQCB and DPH. If required, the project sponsors shall conduct a risk evaluation in accordance with the Pier 70 RMP and incorporate measures to minimize or eliminate exposure to soil vapor.	Considered complete upon a notification submittal to the RWQCB and DPH. If a risk evaluation and further measures are required, they would be reviewed and approved by the RWQCB and DPH.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
vapors.)					
Mitigation Measure M-HZ-7: Modify Hoedown Yard Site Mitigation Plan The project sponsors shall conduct a risk evaluation to evaluate health risks to future site occupants, visitors, and maintenance workers under the proposed land use within the Hoedown Yard. The risk evaluation shall be based on the soil, soil vapor, and groundwater quality data provided in the existing SMP and supporting documents and the project sponsors shall conduct additional sampling as needed to support the risk evaluation. Based on the results of the risk evaluation, the project sponsors shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals (i.e., an excess cancer risk of 1×10^{-6} and a Hazard Index of 1) applicable to each land use proposed for development within the Hoedown Yard. At a minimum, the modified SMP shall include the following components: • Regulatory-approved cleanup levels for the proposed land uses; • A description of existing conditions, including a comparison of site data to regulatory-approved cleanup levels; • Regulatory oversight responsibilities and notification requirements; • Post-development risk management measures, including management measures for the maintenance of engineering controls (e.g., durable covers, vapor mitigation systems) and site maintenance activities that could encounter contaminated soil; • Monitoring and reporting requirements; and • An operations and maintenance plan, including annual inspection requirements.	Project sponsors shall conduct a risk evaluation, and shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals applicable to each land use proposed for development within the Hoedown Yard.	Prior to ground-disturbing activities at the Hoedown Yard.	Project sponsors shall submit the risk evaluation and proposed risk management plan to the RWQCB, DPH, and Port for review and approval.	Considered complete upon review and approval of the risk evaluation and proposed risk management plan by the RWQCB, DPH, and Port.	Port, DPH

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The risk evaluation and proposed risk management plan shall be submitted to the RWQCB, DPH, and Port for review and approval prior to the start of ground disturbance.					
Mitigation Measure M-HZ-8a: Prevent Contact with Serpentinite Bedrock and Fill Materials in Irish Hill Playground The project sponsors shall ensure that a minimum 2-foot thick durable cover of asbestos-free clean imported fill with a vegetated cover is emplaced above serpentinite bedrock and fill materials in the level portions of Irish Hill Playground. The fill shall meet the soil criteria for clean fill specified in Table 4 of the Pier 70 RMP and included in Appendix F, Hazards and Hazardous Materials, of this EIR. Barriers shall be constructed to preclude direct climbing on the bedrock of the Irish Hill remnant. The design of the durable cover and barriers shall be submitted to the DPH and Port for review and approval prior to construction of the Irish Hill Playground.	Project sponsors to design and install a 2-foot-thick durable cover over serpentinite bedrock and fill in the level portions of the Irish Hill Playground and barriers to preclude direct climbing on the bedrock of the Irish Hill remnant.	Submittal of design of durable cover and barriers to DPH and Port prior to construction of the Irish Hill Playground.	Project sponsors shall submit design of durable covers and barriers to DPH, Port	Considered complete upon review and approval of the design and installation of the 2-foot-thick durable cover and barriers by the DPH and Port.	Port, DPH
Mitigation Measure M-HZ-8b: Restrictions on the Use of Irish Hill Playground To the extent feasible, the project sponsors shall ensure that the Irish Hill Playground is not operational until ground disturbing activities for construction of the new 21st Street and on the adjacent parcels (PKN, PKS, HDY-1, HDY2, C1, and C2) is completed. If this is not feasible, and Irish Hill Playground is operational prior to construction of the new 21st Street and construction on all adjacent parcels, the playground shall be closed for use when ground-disturbing activities are occurring for the construction of the new 21st Street and on any of the adjacent parcels.	Project sponsors.	Prior to and during construction of the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2.	Project sponsors shall ensure the playground is not operational until ground-disturbing activities at the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2 are complete; or playground shall be closed for use when ground-disturbing activities are occurring	Considered complete when the aforementioned parcels' ground-disturbing activities are finished. Documentation would occur in the annual mitigation and monitoring report.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
IMPROVEMENT MEASURES FOR THE PIER 70 MIXED-USED DISTRICT PROJECT					
Improvement Measure I-CR-4a: Documentation Before any demolition, rehabilitation, or relocation activities within the UIW Historic District, the project sponsors should retain a professional who meets the Secretary of the Interior's Professional Qualifications Standards for Architectural History to prepare written and photographic documentation of all contributing buildings proposed for demolition within the UIW Historic District. The documentation for the property should be prepared based on the National Park Service's Historic American Building Survey (HABS)/Historic American Engineering Record (HAER) Historical Report Guidelines. This type of documentation is based on a combination of both HABS/HAER standards and National Park Service's policy for photographic documentation, as outlined in the NRHP and National Historic Landmarks Survey Photo Policy Expansion. The written historical data for this documentation should follow HABS/HAER standards. The written data should be accompanied by a sketch plan of the property. Efforts should also be made to locate original construction drawings or plans of the property during the period of significance. If located, these drawings should be photographed, reproduced, and included in the dataset. If construction drawings or plans cannot be located, as-built drawings should be produced. Either HABS/HAER-standard large format or digital photography should be used. If digital photography is used, the ink and paper combinations for printing photographs must be in compliance with NR-NHL Photo Policy Expansion and have a permanency rating of approximately 115 years. Digital photographs should be taken as uncompressed, TIFF file format. The size of each image should be 1,600 by 1,200 pixels at 330 pixels per inch or larger, color format, and printed in black and white. The file name for each electronic image should correspond with the index of photographs and photograph label. Photograph views for the dataset should include (a)	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Project Sponsor Documentation: Before any demolition, rehabilitation, or relocation activities within the UIW Historic District.	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual to complete historic resources documentation, and transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Considered complete when documentation is reviewed and approved by Port Preservation Staff, and the documentation is provided to the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
contextual views; (b) views of each side of each building and interior views, where possible; (c) oblique views of buildings; and (d) detail views of character-defining features, including features on the interiors of some buildings. All views should be referenced on a photographic key. This photographic key should be on a map of the property and should show the photograph number with an arrow to indicate the direction of the view. Historic photographs should also be collected, reproduced, and included in the dataset. The project sponsors should transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System. The project sponsors should scope the documentation measures with Port Preservation staff..					
Improvement Measure I-CR-4b: Public Interpretation Following any demolition, rehabilitation, or relocation activities within the project site, the project sponsors should provide within publicly accessible areas of the project site a permanent display(s) of interpretive materials concerning the history and architectural features of the District's three historical eras (Nineteenth Century, Early Twentieth Century, and World War II), including World War II-era Slipways 5 through 8 and associated craneways. The display(s) should also document the history of the Irish Hill Remnant, including, for example, the original 70- to 100-foot tall Irish Hill landform and neighborhood of lodging, houses, restaurants, and saloons that occupied the once much larger hill until the earlier twentieth century. The content of the interpretive display(s) should be coordinated and consistent with the sitewide interpretive plan prepared for the 28-Acre Site in coordination with the Port. The specific location, media, and other characteristics of such interpretive display(s) should be presented to Port preservation staff for approval prior to any demolition or removal activities.	Project sponsors should provide a permanent display(s) of interpretive materials concerning the history and architectural features of the District within publicly accessible areas of the project site.	Project sponsors provide permanent display: Following any demolition, rehabilitation, or relocation activities within the project site.	Project sponsors submit documentation of permanent display(s) of interpretive materials	Considered complete when interpretive materials are presented to Port preservation staff for approval. The materials would then be presented in the publically accessible area of the project site.	Port
Improvement Measure I-TR-A: Construction Management Plan Traffic Control Plan for Construction – To reduce potential conflicts between	Project sponsors, TMA, and	Prior to issuance of a	Construction contractor(s) to	Considered complete upon	Port, Planning Department,

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
construction activities and pedestrians, bicyclists, transit, and autos during construction activities, the project sponsors should require construction contractor(s) to prepare a traffic control plan for major phases of construction (e.g., demolition and grading, construction, or renovation of individual buildings). The project sponsors and their construction contractor(s) will meet with relevant City agencies to coordinate feasible measures to reduce traffic congestion, including temporary transit stop relocations and other measures to reduce potential traffic and transit disruption and pedestrian circulation effects during major phases of construction. For any work within the public right-of-way, the contractor would be required to comply with San Francisco's Regulations for Working in San Francisco Streets (i.e., the "Blue Book"), which establish rules and permit requirements so that construction activities can be done safely and with the least possible interference with pedestrians, bicyclists, transit, and vehicular traffic. Additionally, non-construction-related truck movements and deliveries should be restricted as feasible during peak hours (generally 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., or other times, as determined by SFMTA and the Transportation Advisory Staff Committee [TASC]). In the event that the construction timeframes of the major phases and other development projects adjacent to the project site overlap, the project sponsors should coordinate with City Agencies through the TASC and the adjacent developers to minimize the severity of any disruption to adjacent land uses and transportation facilities from overlapping construction transportation impacts. The project sponsors, in conjunction with the adjacent developer(s), should propose a construction traffic control plan that includes measures to reduce potential construction traffic conflicts, such as coordinated material drop offs, collective worker parking, and transit to job site and other measures. <u>Reduce Single Occupant Vehicle Mode Share for Construction Workers</u> – To minimize parking demand and vehicle trips associated with construction workers, the project sponsors should require the construction contractor to include in the Traffic Control Plan for Construction methods to encourage	construction contractor(s).	building permit. Project construction updates for adjacent residents and businesses within 150 feet would occur throughout the construction phase.	prepare a Traffic Control Plan and meet with relevant City agencies (i.e., SFMTA, Port Staff, and Planning Department) to coordinate feasible measures to reduce traffic congestion. A single traffic control plan or multiple traffic control plans may be produced to address project phasing.	submittal of the Traffic Control Plan to the SFMTA and the Port. Project construction update materials would be provided in the annual mitigation and monitoring plan.	SFMTA as appropriate

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
walking, bicycling, carpooling, and transit access to the project construction sites and to minimize parking in public rights-of-way by construction workers in the coordinated plan. Project Construction Updates for Adjacent Residents and Businesses – To minimize construction impacts on access for nearby residences, institutions, and businesses, the project sponsors should provide nearby residences and adjacent businesses with regularly-updated information regarding construction, including construction activities, peak construction vehicle activities (e.g., concrete pours), travel lane closures, and lane closures via a newsletter and/or website.					
Improvement Measure I-TR-B: Queue Abatement It should be the responsibility of the owner/operator of any off-street parking facility with more than 20 parking spaces (excluding loading and car-share spaces) to ensure that vehicle queues do not occur regularly on the public right-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of any public street, alley, or sidewalk for a consecutive period of 3 minutes or longer on a daily or weekly basis. If a recurring queue occurs, the owner/operator of the parking facility should employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the parking facility, the street(s) to which the facility connects, and the associated land uses (if applicable). Suggested abatement methods include but are not limited to the following: redesign of facility to improve vehicle circulation and/or on-site queue capacity; employment of parking attendants; installation of LOT FULL signs with active management by parking attendants; use of valet parking or other space-efficient parking techniques; use of off-site parking facilities or shared parking with nearby uses; use of parking occupancy sensors and signage	Project sponsors, owner/operator of any off-street parking facility, and transportation consultant.	On-going during operations of any off-street parking facilities.	The owner/operator of the parking facility should monitor vehicle queues in the public right-of-way, and would employ abatement measures as needed. If the Port Director, or his or her designee, suspects that a recurring queue is present, the Port should notify the property owner in writing. The owner/operator should hire a transportation consultant to	Monitoring of the public right-of-way would be on-going by the owner/operator of off-street parking operations.	Port, Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
directing drivers to available spaces; TDM strategies such as additional bicycle parking, customer shuttles, delivery services; and/or parking demand management strategies such as parking time limits, paid parking, time-of-day parking surcharge, or validated parking. If the Port Director, or his or her designee, suspects that a recurring queue is present, Port Staff should notify the property owner in writing. Upon request, the owner/operator should hire a qualified transportation consultant to evaluate the conditions at the site for no less than 7 days. The consultant should prepare a monitoring report to be submitted to the Port for review. If the Port determines that a recurring queue does exist, the facility owner/operator should have 90 days from the date of the written determination to abate the queue.			prepare a monitoring report and if a recurring queue does exist, the owner/operator would abate the queue.		
Improvement Measure I-TR-C: Strategies to Enhance Transportation Conditions During Events. The project's Transportation Coordinator should participate as a member of the Mission Bay Ballpark Transportation Coordination Committee (MBBTCC) and provide at least 1-month notification to the MBBTCC where feasible prior to the start of any then known event that would overlap with an event at AT&T Park. The City and the project sponsors should meet to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Project sponsors, TMA, parks maintenance entity, parks programming entity, and/or Transportation Coordinator.	Prior to the start of any known event that would overlap with an event at AT&T Park.	Project sponsors and Transportation Coordinator to meet with MBBTCC and City to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Include in MMRP Annual Report; On-going during project lifespan.	Port, Planning Department, SFMTA
Improvement Measure I-WS-3a: Wind Reduction for Public Open Spaces and Pedestrian and Bicycle Areas For each development phase, a qualified wind consultant should prepare a wind impact and mitigation analysis regarding the proposed design of public open spaces and the surrounding proposed buildings. Feasible means should be considered to improve wind comfort conditions for each public open space, particularly for any public seating areas. These feasible means include horizontal and vertical, partially-porous wind screens (including canopies,	Project sponsors and qualified wind consultant.	During the design of public open spaces and pedestrian and bicycle areas for each development phase.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by the Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for public open spaces and pedestrian and	Port or Planning Department

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**[1]
trellises, umbrellas, and walls), street furniture, landscaping, and trees. Specifics for particular public open spaces are set forth in Improvement Measures I-WS-3b to I-WS-3f. Any proposed wind-related improvement measure should be consistent with the design standards and guidelines outlined in the *Pier 70 SUD Design for Development*.				bicycle areas by the Port Staff.	
Improvement Measure I-WS-3b: Wind Reduction for Waterfront Promenade and Waterfront Terrace The Waterfront Promenade and Waterfront Terrace would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing vertical elements, such as wind screens and landscaping. Where necessary and appropriate, wind screens should be strategically placed directly around seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Waterfront Promenade and Waterfront Terrace.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Waterfront Promenade and Waterfront Terrace by Port Staff	Port
Improvement Measure I-WS-3c: Wind Reduction for Slipways Commons The central and western portions of Slipways Commons would be subject to winds exceeding the pedestrian wind comfort criteria. Street trees should be considered along Maryland Street, particularly on the east side of Maryland Street between Buildings E1 and E2. Vertical elements such as wind screens would help for areas where street trees are not feasible. Where necessary and appropriate, wind screens should be strategically placed to the west of any seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of	Project sponsors and qualified wind consultant.	During the design of the Slipway Commons.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Slipway Commons by Port Staff.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
any wind screen or landscaping shall be compatible with the Historic District.					
Improvement Measure I-WS-3d: Wind Reduction for Building 12 Market Plaza and Market Square Building 12 Market Plaza and Market Square would be subject to winds exceeding the pedestrian wind comfort criteria. For reducing wind speeds in the public courtyard between Buildings 2 and 12, the inner south and west façades of Building D-1 could be stepped by at least 12 feet to direct downwashing winds above pedestrian level. Alternatively, overhead protection should be used, such as a 12-foot-deep canopy along the inside south and west façades of Building D-1, or localized trellises or umbrellas over seating areas. For reducing wind speeds on the eastern and southern sides of Building 12, street trees should be considered, along Maryland and 22nd streets. Smaller underplantings should be combined with street trees to reduce winds at pedestrian level. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Building 12 Market Plaza and Market Square.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Building 12 Market Plaza and Market Square by Port Staff.	Port

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
Improvement Measure I-WS-3e: Wind Reduction for Irish Hill Playground The Irish Hill Playground would be subject to winds exceeding the pedestrian wind comfort criteria. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Irish Hill Playground.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Irish Hill Playground by Port Staff.	Port
Improvement Measure I-WS-3f: Wind Reduction for 20th Street Plaza The 20th Street Plaza would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing hardscape elements, such as wind screens, canopies, and umbrellas. Where necessary and appropriate, wind screens should be strategically placed to the northwest of any seating area. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. If there would be seating areas directly adjacent to the north façade of the PKN Building, localized canopies or umbrellas should be used. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the 20th Street Plaza.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the 20th Street Plaza by Port Staff.	Port

VDDA EXHIBIT E

FORM OF MEMORANDUM OF VDDA

Recording Requested by:

When Recorded Mail to:

Assessor Parcel Number (APN): PORTION OF LOT 026, BLOCK 4110 (FORMERLY PORTION OF LOT 001, BLOCK 4110 AND VACATED PORTION OF MICHIGAN STREET, UNASSESSED)
CTC ESC #

MEMORANDUM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT
Please fill in Document Title(s) above this line)

This document is exempt from the $75 Building Homes and Jobs Act Fee (per Government Code §27388.1) because:

□ Document is a transfer of real property subject to the imposition of transfer tax

□ Document is a transfer of real property that is a residential dwelling to an owner-occupier

□ Document is recorded in connection with an exempt transfer of real property (i.e., subject to transfer tax or owner-occupied). If not recorded concurrently, provide recording date and document number of related transfer document:
Recording date _____ Document Number _____

□ The $225 per transaction cap is reached

□ Document is not related to real property

This page added to provide adequate space for recording information (additional recording fee applies)

MEMORANDUM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Memorandum**") dated for reference purposes as of [_____], 201[_] is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the "**Port**"), and **[_____]**, a [_____] (the "**Vertical Developer**").

1. Agreement. Port and Vertical Developer have entered into a Vertical Disposition and Development Agreement dated as of [_____], 201[_] (the "**Agreement**"), under which (a) upon satisfaction or waiver of the conditions described in the Agreement, Port agrees to sell the Property in accordance with the terms of the Agreement (the "**Property**"); (b) upon satisfaction or waiver of the conditions described in the Agreement, Vertical Developer agrees to purchase the Property from Port; and (c) governs the development of the PKN Project. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Agreement.

2. Term: The term of the Agreement shall be from the Effective Date until recording of the Certificate of Completion, unless the Agreement is earlier terminated in accordance with its provisions. If Close of Escrow does not occur by February 12, 2019, as such date and time may be extended with the prior written approval of both Port and Vertical Developer, the Agreement shall automatically terminate. Recording of the Certificate of Completion by the Port will automatically terminate the Agreement, and after such recording, other than the terms and provisions that expressly survive the expiration or earlier termination of the Agreement, the Agreement will have no further force or effect.

3. Notice. The parties have executed and recorded this Memorandum to give notice of the Agreement and their respective rights and obligations under the Agreement to all third parties. The Agreement is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Agreement, the Agreement shall control.

4. Counterparts. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

5. Purchasers of Condominium Units. The Parties acknowledge and agree that, except as set forth in the Restrictive Covenants recorded against the Property which by their terms obligate owners of Condominium Units in the Vertical Project, the VDDA shall not be binding upon or obligate third party purchasers of individual Condominium Units in the Vertical Project.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF the parties hereto have caused this Memorandum of Vertical Disposition and Development Agreement to be executed by their duly appointed representatives as of the date first above written.

VERTICAL DEVELOPER: **[_____]**, a [_____]

By: _____

PORT: **CITY AND COUNTY OF SAN FRANCISCO**, acting by and through the **SAN FRANCISCO PORT COMMISSION**, pursuant to Chapter 477, statutes of 2011 (AB418)

By: _____
Name: Elaine Forbes
Title: Executive Director

Port Resolution No. 17 – 52 (September 26, 2017)
Board of Supervisors Resolution No. XXX-18

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Name: _____,
Deputy City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)
appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

CERTIFICATE OF ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)
appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

EXHIBIT D

REAFFIRMATION OF REPRESENTATIONS AND WARRANTIES

Pursuant to [Section 6.4(a)(iii)] of the Vertical Disposition and Development Agreement between the **CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**") and [_____], a [_____], ("**Vertical Developer**"), dated [_____] ("**Vertical DDA**"), Vertical Developer reaffirms to Port that the representations and warranties made by Vertical Developer and set forth in [Section 25.4] of the Vertical DDA are true and accurate in all material respects as of the date below:

(a) That Vertical Developer is a duly organized limited liability company, validly existing and in good standing under the laws of the State of Delaware. Vertical Developer is duly qualified and in good standing under the laws of the State of California. Vertical Developer has all requisite power and authority to conduct its business as presently conducted.

(b) Vertical Developer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Vertical Developer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it will immediately notify the Port of same and the reasons therefore together with any relevant facts or information requested by Port.

(c) That the Transaction Documents and all documents executed by Vertical Developer: (i) are duly authorized, executed and delivered by Vertical Developer; (ii) are legal, valid and binding obligations of Vertical Developer; and (iii) do not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject. The Transaction Documents will be a legal, valid and binding obligation of Vertical Developer, enforceable against Vertical Developer in accordance with their terms.

(d) That Vertical Developer has all requisite power and authority to execute and deliver the Transaction Documents and to carry out and perform all of the terms and covenants of the Transaction Documents.

(e) None of Vertical Developer's formation documents, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Vertical Developer to enter into and perform all of the terms and covenants of the Transaction Documents. Vertical Developer is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. Except as set forth in the Vertical DDA, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Vertical Developer of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened lawsuits or proceedings or undischarged judgments affecting Vertical Developer before any court, governmental agency, or arbitrator that is reasonably expected to

materially and adversely affect the enforceability of the Transaction Documents or the business, operations, assets or condition of Vertical Developer.

(f) The execution, delivery and performance of the Transaction Documents (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Vertical Developer or by which Vertical Developer's assets may be bound or affected, (B) to Vertical Developer's knowledge, any Law, or (C) the certificate of formation or the operating agreement of Vertical Developer, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Vertical Developer (other than the lien of a Mortgage in accordance with the Vertical DDA).

(g) There is no material adverse change in Vertical Developer's financial condition and Vertical Developer is meeting its current liabilities prior to any delinquency; no federal or state tax liens have been filed against it; and Vertical Developer is not in default or claimed default beyond all applicable notice and cure periods under any agreement for borrowed money.

(h) Notwithstanding anything to the contrary in the Vertical DDA, the foregoing representations and warranties will survive the Closing Date.

All capitalized items not defined herein have the meanings give to them in the Vertical DDA.

IN WITNESS WHEREOF, the undersigned has executed this Reaffirmation of Representations and Warranties as of the [**insert closing date**: [_____], 20__].

[**INSERT VERTICAL DEVELOPER**]

By: _____
Name: _____
Title: _____

EXHIBIT C-2B

FORM OF TRANSFER FEE COVENANT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	

(SPACE ABOVE LINE FOR RECORDER'S USE)

APN:
[**NOTE: Civ. Code 1098.5(b) requires legal description and assessor's parcel number for the affected real property**]

PAYMENT OF TRANSFER FEE REQUIRED

DECLARATION IMPOSING TRANSFER FEE COVENANT AND LIEN

THIS DECLARATION IMPOSING TRANSFER FEE COVENANT AND LIEN (this "**Covenant**") is made as of this ___ day of _____, 20XXX (the "**Effective Date**"), by and between **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), and [**BUYER'S ENTITY NAME AND INFORMATION**] ("**Declarant**"). Port and Declarant are collectively referred to as the "**Parties**", or each individually, a "**Party**".

RECITALS

A. Port and Declarant have entered into that certain Vertical Disposition and Development Agreement, dated [_____, 20XXX], ("**VDDA**") for the property located in the City and County of San Francisco more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"). The Property is a portion of the area generally known as Pier 70 (the "**Project Site**"). It is anticipated that the Property will be developed with residential and commercial condominium units. Declarant will be the initial owner of all the residential and commercial condominium units.

B. Port is a department of the City and County of San Francisco and manages in trust for the people of the State of California, 7½ miles of San Francisco Bay shoreline stretching from Hyde Street Pier in the north to India Basin in the south. Port's responsibilities include promoting maritime commerce, navigation, and fisheries; restoring the environment; and providing public recreation and promoting the statutory trust imposed by the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, and commonly referred to as the "**Burton Act**" (collectively, the "**Public Trust**"). The Burton Act provided for the transfer from the State of California, subject to specified terms, conditions and reservations, to the City, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

C. The Property is located in the Southern Waterfront area of the Port of San Francisco's Waterfront Land Use Plan, which area stretches from Pier 70 in the north to India Basin in the south.

D. Pursuant to the VDDA, Declarant has acknowledged and agreed that as material consideration for Port's conveyance of the Property to Declarant, Port would, among other things, receive Transfer Fees in perpetuity from the sale of the Condominiums on the Property after (but not including) the first sale, as further described in this Covenant, to be evidenced by this Covenant recorded on the Property.

E. The Transfer Fees will be used by Port to promote Public Trust purposes and uses on property within Port's jurisdiction.

NOW THEREFORE, Declarant hereby declares the existence of a perpetual covenant to pay Transfer Fees, and imposes upon each Condominium developed on the Property a lien to secure payment of Transfer Fees in accordance with the following terms and conditions:

1. DEFINITIONS. As used herein, the following terms have the following meanings:

1.1 "**Condominium**" means an estate in real property (i) consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial, and/or retail building on such real property, such as an apartment, office, or store, or (ii) as defined in California Civil Code Sections 783, California Civil Code Division 4, Part 5, Chapter 1 or any successor statute or code, intended for residential or commercial/retail use, as shown on a duly filed final subdivision map, parcel map, or condominium plan of the Property or any portion thereof, and any fractional interest thereof, including, without limitation, timeshare interests as defined in California Business and Professional Code Section 11212(x) derived therefrom, lying within the Property.

1.2 "**Dispute**" means any disagreement between the Parties, or any Owner and Port, concerning the amount, obligation to pay or other issue concerning the Transfer Fees under this Agreement or concerning any other dispute arising under this Covenant.

1.3 "**Escrow Holder**" means any title company, trust company, or other Person serving as an escrow holder or agent for the Transfer of a Unit.

1.4 "**Foreclosure Trustee**" has the meaning given in Section 7.3 below.

1.5 "**First Mortgage**" means any Mortgage with lien priority over any other Mortgage.

1.6 "**Mortgagee**" has the meaning given in Section 5.1 below.

1.7 "**Notice of Lien**" has the meaning given in Section 7.3 below.

1.8 "**Official Records**" means the official records of the City and County of San Francisco, State of California.

1.9 "**Owner**" means the Person or Persons holding record title to the Unit.

1.10 "**Person**" means a natural individual or any entity with the legal right to hold title in real property.

1.11 "**Property**" means the property described in Exhibit A.

1.12 "**Recorded**" means the recordation, filing or entry of a document in the Official Records.

1.13 "**Transfer**" means the sale or exchange of a Condominium (including, without limitation, the sale or exchange of a fractional interest therein or timeshare thereof) or a lease with a term of thirty five (35) years or longer. "Transfer" shall not include:

(a) Any sale, transfer, assignment, or conveyance that is exempt from payment of the real property transfer tax under the San Francisco Business and Tax Regulations Code, Article

12-C, Sections 1105 (but only with respect to the exemption set forth in the first sentence thereof), 1106, 1108, 1108.1, 1108.2, 1108.3, 1108.4, or 1108.5.

(b) The reservation by Declarant of easements, access rights or licenses, water rights or other similar rights benefitting or encumbering any of the Units, or any subsequent transfer of any such easements or rights;

(c) Any transfer of real property to any public agency, entity or district, or any utility service provider; or

(d) Any transfer to an association (defined in Section 4080 of the California Civil Code) of common area (defined in Section 4095 of the California Civil Code);

1.14 "**Transfer Fee**" has the meaning given in ***Section 2.1 below***.

1.15 "**Unit**" has the meaning given in ***Section 2.1 below***.

1.16 "**Unit Purchase Price**" means the gross consideration given by the transferee to the transferor in connection with a Transfer, including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the Transferor that is not paid in consideration for the Transfer but is a pass-through to such third-party (*e.g.* title insurance cost), further excluding any Transfer Fee payable hereunder, and without any other deduction or offset of any kind.

2. TRANSFER FEES.

2.1 Transfer Fee Imposed and Amount. Upon each Transfer of a Condominium unit (each, a "Unit") there shall be due and payable to Port a fee equal to one and one half percent (1½%) of the Unit Purchase Price (the "Transfer Fee") in perpetuity; provided, however, that no Transfer Fee shall be due and payable with respect to the initial Transfer of any Unit. Notwithstanding the foregoing, if the Property has been operated as a rental project for more than ten (10) years after the issuance of the first temporary certificate of occupancy for the Property, a Transfer Fee equal to one and one half percent (1½%) of the Unit Purchase Price shall be due and payable by Declarant, or its successors or assigns, with respect to the initial Transfer of any Unit sold after the tenth anniversary of the receipt of the first temporary certificate of occupancy. Examples of the amount of the Transfer Fee that would be payable, as specifically required by Section 1098.5(b)(2)(C) of the California Civil Code, are as follows:

Unit Purchase Price	Transfer Fee	Transfer Fee Due Port
$250,000	X 0.015	$3,750
$500,000	X 0.015	$7,500
$750,000	X 0.015	$11,250

2.2 When Due and Paid. Subject to ***Section 2.9 below***, with respect to any voluntary conveyance of a Unit, a Transfer Fee shall be due and payable upon recordation (or other delivery) of the instrument of conveyance that constitutes a Transfer. With respect to any

involuntary conveyance that constitutes a Transfer or conveyance by operation of law that constitutes a Transfer, a Transfer Fee shall be due and payable upon demand by Port, or upon recordation of any instrument vesting title in the transferee(s), whichever occurs first, and the transferee(s) shall notify Port of the occurrence of such transfer within a reasonable time after such Transfer occurs, or after obtaining actual knowledge thereof. If a Transfer Fee is not paid when due hereunder, and such failure continues for ten (10) days after notice from Port to the Owner of record, Port may pursue any remedies for failure to pay as set forth in ***Sections 7.1, 7.3, 7.4, and 7.5***.

2.3 Port Release. Upon receipt of a timely notice of Transfer in accordance with ***Section 2.8 below***, Port shall execute and deliver into each escrow established for delivery of the instrument of conveyance that triggers the Transfer Fee obligation, an instrument duly acknowledged and in recordable form (the **"Port Release"**), acknowledging the full payment and satisfaction of the Transfer Fee obligation for the applicable Unit Transfer and releasing any claims arising out of the applicable Transfer for failure to pay the Transfer Fee subject to the following conditions:

(a) Port shall have received the timely notice of Transfer in accordance with ***Section 2.8 below***;

(b) The Transfer Fee amount is verified by Port pursuant to the escrow demand procedures of ***Section 2.10 below***; and

(c) Escrow Holder has agreed that Port Release will not be released from escrow and recorded until the Escrow Holder has received confirmation from Port that Port has received the applicable Transfer Fee.

2.4 Payment by Escrow Holder/Delivery of Port Release. The Transfer Fee shall be paid to Port directly out of escrow established for delivery of the instrument of conveyance that triggers the Transfer Fee obligation. The transferor and transferee shall, and hereby do, irrevocably instruct any Escrow Holder holding funds for a Transfer to pay the Transfer Fee to Port at the address set forth in Section 10 below, or at Port's election upon prior notice to the Escrow Holder, by wire transfer, from the proceeds of the Transfer at the close of escrow; provided, however, the failure of the Escrow Holder to do so shall not relieve the transferor or transferee of the obligation to pay the Transfer Fee. The transferor and transferee shall execute all documents reasonably requested by the Escrow Holder to confirm this instruction and effectuate such payment on or before the close of escrow. In addition, Declarant and any subsequent Owner shall place in escrow, with any agreement by which it Transfers a Unit, escrow instructions which specifically state, among other things, that the Escrow Holder shall pay the Transfer Fee to Port out of the proceeds of the sale at the closing. Escrow Holder is hereby instructed by Port to record and deliver to Owner the Port Release upon the sale of the applicable Unit and payment of the applicable Transfer Fee to Port. Port shall execute all documents reasonably requested by the Escrow Holder before close of escrow to confirm this instruction and effectuate such recordation and delivery of the Port Release.

2.5 Transferor and Transferee Jointly and Severally Liable. The obligation to pay the Transfer Fee for each Transfer is a joint and several obligation of the transferor and the transferee in each transaction. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay in any manner they so choose.

2.6 Late Charges and Interest. The Transfer Fee due Port in connection with an applicable Transfer shall be considered late if not paid within ten (10) business days after recordation of the instrument of conveyance for such applicable Transfer. A late fee of one-half of one percent (0.50%) of the Transfer Fee shall apply thereafter for each day such payment is late, up to a maximum of ten percent (10%) of the Transfer Fee. In addition, any Transfer Fee not paid within twenty-five (25) business days following recordation of the instrument of conveyance shall thereafter bear interest at the rate of ten percent (10%) per annum until paid.

However, interest shall not be payable on late fees imposed or to the extent such payment would violate any applicable usury or similar law.

2.7 Covenant to Pay and Creation of Lien. Each Owner of an interest in a Unit, by acceptance of a deed or other instrument of conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it is so expressed in any such deed or other instrument of conveyance, hereby covenants and agrees to pay the Transfer Fee to Port in connection with each Transfer by which an Owner acquires or conveys such Unit. The Transfer Fee, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of collection thereof, as hereinafter provided, shall be a lien and charge upon the Unit the transfer of which gives rise to the Transfer Fee.

2.8 Mandatory Notice. Every Owner must notify Port within the earlier of: (i) twenty (20) days after execution of a contract to Transfer a Unit, or (ii) five (5) days prior to the effective date of the Transfer. Such notice shall be provided to Port's address for notice set forth in Article 9 below, and shall be enclosed in an envelope marked prominently: "NOTICE OF UNIT TRANSFER-PIER 70." Such notice shall be substantially in the form attached hereto as Exhibit B and will include: (i) the name and address of the transferor (ii) the name and address of the transferee; (iii) an identification of the Unit being Transferred; (iv) the Unit Purchase Price; (v) the amount of the Transfer Fee that is due and the formula for calculating the same; (vi) the proposed closing or effective date; (vii) the name, address and phone number of the Escrow Holder for the Transfer; (viii) and the name of the escrow officer. If any of the information set forth above is not available when the notice is originally sent to Port, the Owner shall notify Port as soon as such information becomes available. In addition, each Owner shall accurately update Port if any of such information provided shall change on or prior to the closing of effective date of the Transfer.

2.9 Exchange Transfer. If a particular transaction involves more than one Transfer solely because the Unit is held for an interim period by an accommodation party as part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Transfer Fee must be paid in connection therewith, and the accommodation party shall not have any liability for payment of such Transfer Fee.

2.10 Escrow Demand. Port is hereby authorized as a third party beneficiary of any such escrow to submit a demand into escrow for payment of the Transfer Fee and for any information about the Transfer (such as the date of closing and purchase price) that has not previously been provided to Port; provided that Port's failure to place such demand shall not affect the obligation of the parties to cause the Transfer Fee to be paid to Port or operate as a waiver of the right of Port to receive the Transfer Fees. The demand shall state (a) either the amount of the Transfer Fee that is due or the formula for calculating the amount of the Transfer Fee that is due, and (b) that the Transfer Fee is due and payable upon recordation (or other delivery) of the instrument of conveyance. The transferor and transferee shall execute any and all escrow documents reasonably requested by Port or Escrow Agent to effectuate the release and payment of Transfer Fee to Port.

BY ACQUIRING TITLE TO A UNIT, EACH OWNER OF A UNIT HEREBY IRREVOCABLY INSTRUCTS ANY ESCROW HOLDER HOLDING FUNDS FOR THE TRANSFER OF THE UNIT TO PAY THE TRANSFER FEE TO PORT FROM THE PROCEEDS OF SALE OF THE UNIT, AS SET FORTH HEREIN.

3. BINDING EFFECT. Declarant hereby declares that the Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the rights, reservations, restrictions, covenants, conditions and equitable servitudes contained in this Covenant. The rights, reservations, restrictions, covenants, conditions and equitable servitudes set forth in this Covenant will (1) run with and burden each Unit within the Property in perpetuity and will be

binding upon all persons having or acquiring any interest in any Unit or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Property and any interest therein; (3) inure to the benefit of and be binding upon Declarant, Port, each Owner, and their respective successors-in-interest; and (4) may be enforced by Declarant, Port, each Owner, and their respective successors-in-interest. The Parties hereby acknowledge and agree that the obligation to pay a Transfer Fee upon the Transfer of any Unit is not a personal covenant or obligation of Declarant, and that where Declarant is not a transferor, Declarant shall not be obligated to pay any Transfer Fee regarding any Unit.

4. USES OF THE TRANSFER FEES. Port shall deposit the Transfer Fees into Port's Harbor Fund, to be used solely for Public Trust purposes benefitting lands under Port jurisdiction. Declarant believes that the services, activities, and improvements to be provided by Port under this Section will enhance the value of and will benefit all the land in the specified area, including all Units existing or to be created on the Property. Each Owner who acquires a Unit by such acquisition agrees to and acknowledges the statements made in this Section.

5. MORTGAGES.

5.1 Rights of Mortgagees. Nothing in this Covenant, and no default by an Owner in payment of Transfer Fees, shall defeat or render invalid the rights of the holder of any mortgage or the beneficiary of any deed of trust appearing of record as an encumbrance on any Unit (such holder or beneficiary, collectively **"Mortgagee,"** and such recorded mortgage or deed of trust, collectively "**Mortgage**") made in good faith and for value, provided that after the foreclosure or transfer in-lieu of foreclosure of any such Mortgage, such Unit shall remain subject to this Covenant.

5.2 Subordination to First Mortgages. Subject to ***Section 5.1***, the rights and obligations of the Parties hereunder concerning any Unit shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Unit; provided, however, that the foregoing subordination shall not apply to Transfer Fees that are not paid when due (i) arising from the Transfer that gave rise to the Recorded First Mortgage, or (ii) described in a Notice of Lien filed at least 21 days prior to the date of recordation of the Recorded First Mortgage.

5.3 Effect of Foreclosure. No foreclosure of a Mortgage on a Unit or a transfer in lieu of foreclosure shall impair or otherwise affect Port's right to pursue payment of any Transfer Fee due in connection with the Transfer of that Unit from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Unit or the purchaser thereof from liability for any Transfer Fees thereafter becoming due or from the lien therefor.

6. ESTOPPEL CERTIFICATE. Within ten (10) days of the receipt of a written request of any Owner of a Unit for which no Transfer Fee is due and owing and as to which Unit Port holds no lien, Port shall deliver to such Owner an executed estoppel certificate certifying that no Transfer Fee is due and owing for such Unit and that Port holds no lien against such Unit.

7. ENFORCEMENT.

7.1 Remedies. Port shall be entitled to any and all rights and remedies available at law or equity in order to collect the Transfer Fees owed it, including but not limited to, specific performance.

7.2 Small Claims Court. Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Any party may submit the Dispute to such court.

7.3 Enforcement by Lien. Without limiting any other right or remedy, there is hereby created a claim of lien, with power of sale, on each and every Unit, or any fractional interest therein that is the subject of a Transfer, to secure prompt and faithful performance of each Owner's obligations under this Covenant for the payment to Port of the Transfer Fees, together with interest thereon, and all late charges, interest, and costs of collection which may be

paid or incurred by Port in connection therewith, including reasonable attorneys' fees. If payment of the Transfer Fee is not made to Port within ten (10) days after notice from Port to the Owner of record, then at any time after the delinquency unless cured, Port may elect to file and record in the Official Records a notice of default and claim of lien against the Unit of the defaulting Owner ("**Notice of Lien**"). Such Notice of Lien shall be executed and acknowledged by Port's Executive Director or his or her designee, and shall contain substantially the following information:

(a) The name of the defaulting Owner,

(b) A legal description of the Unit;

(c) The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

(d) A statement that the Notice of Lien is made pursuant to this Covenant; and

(e) A statement that a lien is claimed against the Unit in the amount stated, and that Port has elected to foreclose the lien against the Unit.

Upon such recordation of a duly executed original or copy of such Notice of Lien and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective.

7.4 Foreclosure of Lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) (the **"Foreclosure Trustee"**) shall be a title company or other neutral third party with prior trustee experience appointed by Port. Port shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Unit acquired at such sale subject to the provisions of this Covenant. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

7.5 Proceeds of Sale. The proceeds of any foreclosure, trustee's or judgment sale provided for in this Covenant shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Transfer Fees hereunder or any liens, shall be paid to each Mortgagee in their respective order of priority to satisfy any outstanding lien, with any remaining balance to be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Unit free from the sums or performance claimed (except as stated in this section) but otherwise subject to the provisions of this Agreement; and no such sale or transfer shall relieve such Unit or the purchaser thereof from liability for any Transfer Fees, other payments or performance thereafter becoming due or from the lien therefore as provided for in this section. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the defaulting Owner.

7.6 Cure of Default. Upon the timely curing of any default for which a Notice of Lien was filed by Port, Port is hereby authorized to record an appropriate release of such lien in the Official Records.

8. AMENDMENT.

8.1 Port may record against the Property an assignment and notice in order to assign its rights hereunder to, and to specifically identify, its successor in interest in the event that the

lands of Port are transferred to the State of California or any other agency, in which event this Covenant will be deemed to be so modified.

8.2 This Covenant may be amended by Declarant and Port to impose an equivalent system of fees in the form of a special tax, assessment or other levy pursuant to an agreement with the City and County of San Francisco; provided, however, that in no event shall any such superseding structure, covenant, lien or other arrangement (a) impose upon Declarant, the Property, or the Units any greater liability or obligation than the liabilities and obligations provided for herein, or (b) impose an obligation for payment of any amounts to an "association," as defined in California Civil Code Section 4080, or a "community service organization or similar entity" within the meaning of California Civil Code Section 4110, unless the collection of such amounts by such entity would not constitute a violation of Civil Code Sections 4575 and 4580 or other applicable law.

9. SERIAL IMPOSITION AND RECORDATION. No Transfer Fees shall be payable with respect to any transfer of a portion of the Property that has not yet been subdivided to enable the development of the Condominiums on the Property or with respect to the recordation of the subdivision map creating the Condominiums.

10. NOTICES. All notices required or allowed hereunder shall be in writing. Notices to Declarant or notices or payment of the Transfer Fees to Port may be given at the following addresses:

Port:	San Francisco Port Commission Pier 1 San Francisco, California 94111 Attention: Director of Real Estate & Development (Reference: Pier 70) Telephone: (415) 274-0400
With a copy to:	San Francisco Port Commission Pier 1 San Francisco, California 94111 Attention: General Counsel (Reference: Pier 70) Telephone: (415) 274-0400
Declarant:	[Insert contact info]
With a copy to:	

All notices required or allowed to an Owner shall be in writing and shall be sent to the address of the Unit owned by the Owner.

Notices may be given by personal delivery, or sent by reputable overnight delivery service with charges prepaid for next-business-day delivery, or by first class certified U.S. Mail with postage prepaid and return receipt requested. Notices are effective on the earlier of the date received, one business day after transmittal by overnight delivery service, or the third day after the postmark date, as applicable. Each Owner who transfers a Unit shall give notice to Port of the name and mailing address of the transferee.

11. MISCELLANEOUS.

11.1 Governing Law. The provisions hereof shall be construed and enforced in accordance with the laws of the State of California.

11.2 Attorneys' Fees. In any action or proceeding to seek a declaration of rights hereunder, to enforce the terms hereof or to recover damages or other relief for alleged breach, then the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs, including experts' fees, costs incurred in connection with (a) post judgment motions, (b) appeals, (c) contempt proceedings, (d) garnishments and levies, (e) debtor and third-party examinations, (f) discovery, and (g) bankruptcy litigation. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing, perfecting and executing such judgment. A party shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment.

11.3 Time. Time is of the essence of each and every provision hereof.

11.4 Disclaimers. Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

11.5 Construction. Whenever the context of this Covenant requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Descriptive section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

11.6 Waiver. Any waiver with respect to any provision of this Covenant shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this Covenant by a party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Covenant. No waiver will be interpreted as a continuing waiver.

11.7 Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

11.8 Severability. Invalidation of any portion or provision of this Covenant by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect to the maximum extent permitted by law.

11.9 No Dedication. The provisions of this Covenant are for the exclusive benefit of Declarant, Port and their respective successors and assigns, and, except for rights expressly conferred on Port hereunder, shall not be deemed to confer any rights upon any other person. Without limiting the generality of the foregoing, this Covenant is not intended to create any rights in the public.

[Remainder of this Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties have executed this Covenant as of the day and year first above written.

Declarant:	[BUYER'S ENTITY NAME AND STATE OF FORMATION]
Port:	**CITY AND COUNTY OF SAN FRANCISCO,** a municipal corporation, acting by the **SAN FRANCISCO PORT COMMISSION** By: _____ Name: _____ Title: _____
Approved by **CITY AND COUNTY OF SAN FRANCISCO**, Department of Real Estate _____	

Transfer Fee Covenant
Exhibit A

Property Description

[To be attached]

Transfer Fee Covenant

Exhibit B

Notice of Transfer Fee Covenant

NOTICE OF UNIT TRANSFER – PIER 70

1. Unit Being Transferred:_____[address]_____, Unit #_____

2. Name of Current Owner (transferor):_____

3. Name of Purchaser (transferee):_____

4. Unit Purchase Price:_____

5. Proposed Date of Closing (date deed transferring title is recorded):_____

6. Name, Address, and Phone Number of Escrow Agent (usually the title company providing title insurance to the purchaser):_____

7. Name of Escrow Officer: _____

8. Estimated Amount of Transfer Fee Due:_____

Calculate Estimated Amount of Transfer Fee as follows:

Unit Purchase Price X 0.015 = Amount of Transfer Fee

EXHIBIT C-2A

FORM OF NOTICE OF TRANSFER FEE COVENANT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN: [**NOTE: Civ. Code 1098.5(b) requires legal description and assessor's parcel number for the affected real property**]

PAYMENT OF TRANSFER FEE REQUIRED

This Notice of Payment of Transfer Fee Required (this "**Notice**") is made as of this ___ day of _____, 20___ , and is being recorded concurrently with that certain Declaration Imposing Transfer Fee Covenant and Lien (the "**Transfer Fee Covenant**") by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**"), and [BUYER'S ENTITY NAME AND INFORMATION] ("**Declarant**"). This Notice and the Transfer Fee Covenant relate to the development located within the City and County of San Francisco, State of California, as is more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Property**").

This Notice is being recorded pursuant to and in compliance with California Civil Code §1098.5(b). Notice is hereby given that the Transfer Fee Covenant imposes an obligation to pay Transfer Fees on certain qualifying Transfers of Units. All capitalized terms shall have the meaning set forth in Transfer Fee Covenant unless otherwise defined herein.

Name of Current Owner of the Property and APN's

(A) As of the date of recordation of this Notice, the current owner of the Property is Declarant. The assessor's parcel numbers within the Property are [_____].

The Percentage of the Sales Price Constituting the Cost of the Transfer Fee

(B) The Transfer Fee obligation is calculated as a percentage of the sales price given in exchange for a Unit. The Transfer Fee is equal to one and one half percent (1½%) of the Unit Purchase Price (the "**Transfer Fee**") in perpetuity; provided, however, that no Transfer Fee shall be due and payable with respect to the initial Transfer of any Unit unless the Property is operated as a rental project for a period exceeding ten (10) years after the issuance of the first temporary certificate of occupancy for the Property, in which case a Transfer Fee equal to one and one half

percent (1½%) of the Unit Purchase Price shall be due and payable by Declarant, or its successors or assigns, with respect to the initial Transfer of any Unit.

Actual Dollar-Cost Examples of the Transfer Fee Calculations

(C) As an actual dollar cost example of the Transfer Fee percentages shown in (B) above, the following calculations show what the Transfer Fee would be for different Unit Purchase Prices within the Property:

Unit Purchase Price	Transfer Fee	Transfer Fee Due Port
$250,000	X 0.015	$3,750
$500,000	X 0.015	$7,500
$750,000	X 0.015	$11.250

Expiration of Transfer Fee

(D) The Transfer Fee described in this Notice will not expire and lasts in perpetuity, unless amended or terminated in accordance with the Transfer Fee Covenant.

Purpose of Transfer Fee: Use of Funds

(E) The Transfer Fees shall be deposited into Port's Harbor Fund and will be used solely for public trust purposes benefitting lands under Port jurisdiction.

Entity Receiving Transfer Fees and Contact Information

(F) The Transfer Fees shall be paid to Port with the following contact information:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Reference: Pier 70 28-Acre Site Transfer Fee
Attn: Deputy Director, Real Estate and Development

Certain Prohibition on the Federal Housing Finance Agency and the Federal Housing Administration Financing Properties Encumbered by Private Transfer Fee

The Federal Housing Finance Agency and the Federal Housing Administration are prohibited from dealing in mortgages on properties encumbered by private transfer fee covenants that do not provide a "direct benefit" to the real property encumbered by the covenant. As a result, if you purchase such a property, you or individuals you want to sell the property to may have difficulty obtaining financing.

This Notice is intended as a summary of the provisions of the Transfer Fee Covenant in compliance with California Civil Code §1098.5 and does not modify or amend the Transfer Fee Covenant or any of its provisions. In the case of any inconsistency or inaccuracy between the Transfer Fee Covenant and this Notice, the Transfer Fee Covenant controls. Please review the Transfer Fee Covenant for more details about the Transfer Fee.

The undersigned have made this Notice on the date set forth above and has caused this Notice to be recorded in the Official Records of the City and County of San Francisco, State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the Declarant has executed this Covenant as of the day and year first above written.

DECLARANT:

[**insert Declarant name]**, a _____

By: _____
Name:_____
Title:_____

CONSENT OF PORT

Port hereby agrees and consents to be the recipient of the Transfer Fee funds on the date first set forth above as required by California Civil Code § 1098.5(b)(2)(G).

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

Exhibit "A"

The Property

[Legal Description to be inserted]

EXHIBIT C-1B

FORM OF RESIDENTIAL CONDOMINIUM UNIT OWNERS RESTRICTIVE COVENANTS (CONDOMINIUM PARCELS)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: Port of San Francisco Pier 1 San Francisco, CA 94111 Attn: Director of Real Estate and Development The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and from Documentary Transfer Tax (CA Rev. & Tax. Code § 11922 and SF Bus. and Tax Reg. Code § 1105)	

SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN: Block _____, Lot _____

RESIDENTIAL CONDOMINIUM UNIT OWNERS RESTRICTIVE COVENANTS

(Condominium Parcels)

THIS NOTICE OF SPECIAL RESTRICTIONS AND RELEASE(this "**Declaration**") is made as of this ___ day of _____, 201XXX (the "**Effective Date**"), by and between **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), and **64 PKN OWNER, LLC**, a Delaware limited liability company ("**Declarant**"). Port and Declarant are collectively referred to herein as the "**Parties**", or each individually, a "**Party**".

RECITALS

A. Port and Declarant entered into a Vertical Disposition and Development Agreement dated as of [_____] ("**VDDA**"), which granted the Declarant the right to purchase, upon satisfaction of certain conditions, that certain real property located in the City and County of San Francisco generally bound by Illinois, Michigan, 20th and 21st Streets, as further described in ***Exhibit A*** (the "**Property**"). The Property is located within the area commonly known as Pier 70 in the City and County of San Francisco. The Parties acknowledge that certain Declaration of Restrictions, Covenants, Maritime and Industrial Uses and Release dated and recorded on or about the same date herewith, addresses additional restrictions applicable to the Property, but not any Condominiums thereon.

B. It is anticipated that the Property will be developed with residential and commercial Condominium units and Declarant will construct a public plaza and other infrastructure improvements adjacent or near the Property, as further described in the VDDA (collectively, the "**PKN Project**"). Declarant will be the initial owner of all the residential and commercial Condominium units. "**Condominium**" means an estate in real property (i) consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial, and/or

retail building on such real property, such as an apartment, office, or store, or (ii) as defined in California Civil Code Sections 783, California Civil Code Division 4, Part 5, Chapter 1 or any successor statute or code, intended for residential or commercial/retail use, as shown on a duly filed final subdivision map, parcel map, or condominium plan of the Property or any portion thereof, and any fractional interest thereof, including, without limitation, timeshare interests as defined in California Business and Professional Code Section 11212(x) derived therefrom, lying within the Property.

C. As a material part of Declarant's consideration to Port [and the City] for the sale of the Property, and as a condition precedent to such sale, Declarant agrees that each Condominium will be bound by the terms and conditions of this Declaration in perpetuity. Developer acknowledges that Port would not have sold (or caused the City to sell) the Property to Declarant pursuant to the VDDA without Declarant's agreement that each Condominium will be bound by the terms and conditions of this Declaration in perpetuity.

NOW THEREFORE, Declarant hereby imposes on each Condominium certain rights, reservations, restrictions, covenants, conditions, and equitable servitudes on the following terms and conditions:

1. **Binding Effect**. Each and every Condominium will be held, leased, transferred, encumbered, used, occupied and improved subject to the rights, reservations, restrictions, covenants, conditions, and equitable servitudes contained in this Declaration. The rights, reservations, restrictions, covenants, conditions and equitable servitudes set forth in this Declaration will (1) run with and burden each Condominium in perpetuity and will be binding upon all persons having or acquiring any interest in each Condominium or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of each Condominium and any interest therein; (3) inure to the benefit of and be binding upon Declarant, Port, each owner of a Condominium, and their respective successors-in-interest; and (4) may be enforced by Declarant, Port, the City, and their respective successors-in-interest.

2. **Pier 70 Shipyard**. Declarant, on behalf of itself and its successors and assigns (including each and every owner of a Condominium) acknowledges that each Condominium is located in proximity to the Pier 70 Shipyard (the "**Pier 70 Shipyard**"), an industrial facility that contains approximately 14.7 acres of improved land and 17.4 acres of submerged lands, including floating Dry Dock#2, floating Dry Dock Eureka, and an 8k ampere Shoreside Power System. Existing and future operations at the Pier 70 Shipyard may generate certain impacts such as noise, parking congestion, truck traffic, auto traffic, odors, dust, dirt, view and visual obstructions. In order to avoid interference with the Pier 70 Shipyard without being subject to suits by adjacent property owners or tenants against Port and the Pier 70 Shipyard operator for nuisance, inverse condemnation or similar causes of action, Declarant acknowledges the foregoing facts and understandings and agrees to the release and waiver set forth in ***Section 12 below***. In addition, Declarant will include as a deed restriction in the deed delivered to a subsequent purchaser of a condominium unit or in any lease for the Condominium, an acknowledgment of the foregoing impacts, and a waiver of rights relating to commencing or maintaining a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard.

3. **American Industrial Center**. Declarant, on behalf of itself and its successors and assigns (including each and every owner of a Condominium) acknowledges that each Condominium is located in proximity to the American Industrial Center ("**AIC**"), which houses approximately 900,000 square feet of commercial, industrial, and related supporting uses. Approximately 300 tenants, including breweries, commercial kitchens and bakeries, garment manufacturing businesses, warehouses, and distribution centers, lease space in the AIC and approximately 2,500 to 3,000 people are on the site at a given time. AIC loading docks are located on Illinois Street, and noise from loading activities could cause noise disturbance along the western

boundary of the Property. In order to minimize interference with the AIC without being subject to suits by adjacent property owners or tenants against AIC for nuisance, inverse condemnation or similar causes of action, Declarant acknowledges the foregoing facts and understandings in this Declaration and agrees to the release and waiver set forth in ***Section 12 below***. In addition, Declarant will provide the following disclosure to lessees prior to signing a lease or purchasers of condominium units at the time required by California Civil Code Section 1102.3:

> "DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S): You are purchasing or leasing property that is adjacent to or nearby to the existing American Industrial Center (AIC). As of [DATE], the AIC is located in a PDR-1-G (Production, Distribution and Repair – General) zoning district and contains light industrial, as well as office, retail, and other uses. Consistent with such zoning, the AIC operations generate noise associated with truck traffic and loading activities at the AIC and other impacts at all hours of the day, seven days per week, even if operating in conformance with existing laws and regulations and locally accepted customs and standards for operations of such uses. California law provides: "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance." (Cal. Civil Code Section 3482). You should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living near the AIC, and understand that the AIC is not required to alter its current or future activities undertaken in compliance with applicable laws and zoning regulations after construction of your building."

4. **No Prepayment of Services Special Taxes or Facilities Special Taxes**. Each and every owner of a Condominium is prohibited from prepaying Services Special Taxes and Facilities Special Taxes, as each is described in the Rate and Method of Apportionment of Special Taxes for the Pier 70 Condo CFD.

5. **Continuance of Services Special Taxes**. Each and every owner of a Condominium must pay an amount equivalent to Services Special Taxes that would have been levied if the community facility districts ("**CFDs**") applicable to the applicable Condominium or their taxing powers are ever eliminated or reduced for any reason, including any vote of the qualified electors in the CFD applicable to the Condominium.

6. **Mitigation Monitoring and Reporting Program**. Each and every owner of a Condominium must comply with the applicable mitigation measures set forth in the Mitigation Monitoring and Reporting Program that the San Francisco Planning Commission adopted by Motion No. 19977 and the Port Commission adopted by Resolution No. 17-43. [**Note: Port, in consultation with Declarant, will identify the mit measures applicable to condominium owners prior to Close of Escrow**]

7. **Residential Parking Permits**. No resident of the PKN Project will be eligible for Residential Parking Permits under Transportation Code Section 905.

8. **Enforcement**. Port will be entitled to any and all rights and remedies available at law or equity in order to enforce its rights under this Declaration, including but not limited to, specific performance.

9. **Notices**. All notices required or allowed hereunder shall be in writing. Notices to Declarant or notices to Port may be given at the following addresses:

To Port:
San Francisco Port Commission
Pier 1
San Francisco, California 94111
Attention: Director of Planning & Development
Telephone: (415) 274-0400

With a Copy To:
San Francisco City Attorney's Office
San Francisco Port Commission
Pier 1
San Francisco, California 94111
Attention: General Counsel
Telephone: (415) 274-0400

To Declarant:
64 PKN OWNER, LLC
[_____]
[_____]

The notice address for the owner of a Condominium from and after the first sale of such Condominium will be the Property address and the applicable unit number. Notices may be given by personal delivery, or sent by reputable overnight delivery service with charges prepaid for next-business-day delivery, or by first class certified U.S. Mail with postage prepaid and return receipt requested. Notices are effective on the earlier of the date received, one business day after transmittal by overnight delivery service, or the third day after the postmark date, as applicable.

10. Third Party Beneficiary. The Parties agree that the City and Port are intended named third party beneficiaries of the covenants, acknowledgments, agreements, waivers and releases contained in this Declaration.

11. Covenants Run With the Land. The Parties intend and agree that the covenants, acknowledgments, agreements, waivers and releases contained in this Declaration are covenants, not conditions, running with the land and they will, in any event, and without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, be binding for the benefit of the City and Port and will be enforceable by either the City, Port, or both, against Declarant and its successors and assigns and subsequent owners, lessees, and other users of each Condominium. Notwithstanding anything to the contrary in the foregoing, Port shall have the right to terminate or waive the requirements set forth in this Declaration in writing if such termination or waiver is approved by the Port's Commission in its sole discretion.

12. Release of the City Parties. Declarant, on behalf of itself and its successors and assigns (including each and every owner of a Condominium), waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges, the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, and all of their respective officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives

and assigns (collectively, the "**City Parties**" and individually, "**City Party**"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, Attorneys' Fees and Costs), whether direct or indirect, known or unknown, foreseen or unforeseen (collectively, "**Claims**"), that Declarant, its successors and assigns (including each and every owner of a Condominium) may now have or that may arise on account of or in any way be connected with (A) Declarant's completion of, or failure to complete, all or any part of the PKN Project, (B) the master developer of the Waterfront Project at Pier 70's completion of, or failure to complete, all or any part of the horizontal improvements or any part of the Pier 70 Project, (C) the payment by the buyer or seller of any Condominium of any fees set forth in the Transfer Fee Covenant to be recorded against the Property and each Condominium, (D) the Pier 70 Shipyard, (E) the AIC, (F) hazardous materials, and (G) from any cause in, on, around, under, and pertaining to the Property, the PKN Project or any of the Condominiums, including all Claims arising from the joint, concurrent, active or passive negligence of any of City Parties, but excluding any intentionally harmful acts committed solely by Port or City. Declarant's release and waiver under this Declaration shall not apply to (a) any Claims resulting from the gross negligence or willful misconduct of any of City Party or (b) any third-party tort Claims arising prior to recordation of this Declaration.

The City Parties would not have been willing to sell the Property to Declarant in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the City Parties, and Declarant expressly assumes the risk with respect thereto. Accordingly, as a material part of the consideration for the sale of the Property to Declarant, Declarant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the City Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, the City Parties arising out of this Declaration or the uses authorized hereunder, including, any interference with uses conducted by Declarant pursuant to this Declaration regardless of the cause, and whether or not due to the negligence of the City Parties.

Declarant understands and expressly accepts and assumes the risk that any facts concerning the Claims released, waived, and discharged in this Declaration includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated Claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Declaration will remain effective. Accordingly, with respect to the Claims released, waived, and discharged in this Declaration, Declarant expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
>
> BY PLACING ITS INITIALS BELOW, DECLARANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT DECLARANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS DECLARATION WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.
>
> INITIALS: DECLARANT:_____

13. Miscellaneous.

13.1. Governing Law. The provisions hereof shall be construed and enforced in accordance with the laws of the State of California.

13.2. Attorneys' Fees. In any action or proceeding to seek a declaration of rights hereunder, to enforce the terms hereof or to recover damages or other relief for alleged breach, then the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs, including experts' fees, costs incurred in connection with (a) post judgment motions, (b) appeals, (c) contempt proceedings, (d) garnishments and levies, (e) debtor and third-party examinations, (f) discovery, and (g) bankruptcy litigation. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing, perfecting and executing such judgment. A party shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. For purposes of this Declaration, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

13.3. Time. Time is of the essence of each and every provision hereof.

13.4. Disclaimers. Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

13.5. Construction. Whenever the context of this Declaration requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Descriptive section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

13.6. Waiver. Any waiver with respect to any provision of this Declaration shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this Declaration by a party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Declaration. No waiver will be interpreted as a continuing waiver.

13.7. Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

13.8. Severability. Invalidation of any portion or provision of this Declaration by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect to the maximum extent permitted by law.

13.9. No Dedication. This Declaration is not intended to create any rights in the public.

[Remainder of this Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties have executed this Declaration as of the day and year first above written.

Port:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

Declarant:

64 PKN OWNER, LLC, a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT A

PROPERTY DESCRIPTION

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT C1-A

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Director of Real Estate and Development

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and from Documentary Transfer Tax (CA Rev. & Tax. Code § 11922 and SF Bus. and Tax Reg. Code § 1105)

SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN: Block _____, Lot _____

DECLARATION OF RESTRICTIONS, COVENANTS, MARITIME AND INDUSTRIAL USES AND RELEASE

(Real Property)

THIS DECLARATION OF RESTRICTIONS, COVENANTS, MARITIME AND INDUSTRIAL USES AND RELEASE(this "**Declaration**") is made as of this ___ day of _____, 201XXX (the "**Effective Date**"), by and between **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), and _____ ("**Declarant**"). Port and Declarant are collectively referred to herein as the "**Parties**", or each individually, a "**Party**".

RECITALS

A. Port and Declarant entered into a Vertical Disposition and Development Agreement dated as of [_____] ("**VDDA**"), which granted the Declarant the right to purchase, upon satisfaction of certain conditions, that certain real property located in the City and County of San Francisco generally bound by Illinois, Michigan, 20th and 21st Streets, as further described in ***Exhibit A*** (the "**Property**"). Declarant will develop a mixed-use residential condominium project on the Property ("**Residential Project**"). The Property is located within the area commonly known as Pier 70 in the City and County of San Francisco. The term "**Property**" includes any partial interest in the Property, but explicitly excludes any condominium interest in the Property. The Parties acknowledge that certain Notice of Special Restrictions dated and recorded on or about the same date herewith, addresses special restrictions applicable to the condominium interests in the Property.

B. As a material part of Declarant's consideration to Port [and the City] for the sale of the Property, and as a condition precedent to such sale, Declarant agrees that the Property will be bound by the terms and conditions of this Declaration in perpetuity. Developer acknowledges that Port would not have sold (or caused the City to sell) the Property to Declarant pursuant to the VDDA without Declarant's agreement that the Property will be bound by the terms and conditions of this Declaration in perpetuity.

NOW THEREFORE, Declarant hereby imposes on the Property certain rights, reservations, restrictions, covenants, conditions, and equitable servitudes on the following terms and conditions:

1. **Binding Effect**. Declarant hereby declares that the Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the rights, reservations, restrictions, covenants, conditions, and equitable servitudes contained in this Declaration. The rights, reservations, restrictions, covenants, conditions and equitable servitudes set forth in this Declaration will (1) run with and burden the Property in perpetuity and will be binding upon all persons having or acquiring any interest in the Property or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Property and any interest therein; (3) inure to the benefit of and be binding upon Declarant, Port, and their respective successors-in-interest; and (4) may be enforced by Declarant, Port, the City, and their respective successors-in-interest.

2. **Pier 70 Shipyard**. Declarant acknowledges that the Property is located in proximity to the Pier 70 Shipyard (the "**Pier 70 Shipyard**"), an industrial facility that contains approximately 14.7 acres of improved land and 17.4 acres of submerged lands, including floating Dry Dock#2, floating Dry Dock Eureka, and an 8k ampere Shoreside Power System. Existing and future operations at the Pier 70 Shipyard may generate certain impacts such as noise, parking congestion, truck traffic, auto traffic, odors, dust, dirt, view and visual obstructions. In order to avoid interference with the Pier 70 Shipyard without being subject to suits by adjacent property owners or tenants against Port and the Pier 70 Shipyard operator for nuisance, inverse condemnation or similar causes of action, Declarant acknowledges the foregoing facts and understandings and agrees to the release and waiver set forth in ***Section 14 below***. In addition, Declarant will include as a deed restriction in each deed delivered to a purchaser of a condominium unit or in any lease for a residential unit, an acknowledgment of the foregoing impacts, and a waiver of rights relating to commencing or maintaining a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard.

3. **American Industrial Center**. Declarant acknowledges that the Property is located in proximity to the American Industrial Center ("**AIC**"), which houses approximately 900,000 square feet of commercial, industrial, and related supporting uses. Approximately 300 tenants, including breweries, commercial kitchens and bakeries, garment manufacturing businesses, warehouses, and distribution centers, lease space in the AIC and approximately 2,500 to 3,000 people are on the site at a given time. AIC loading docks are located on Illinois Street, and noise from loading activities could cause noise disturbance along the western boundary of the Property. In order to minimize interference with the AIC without being subject to suits by adjacent property owners or tenants against AIC for nuisance, inverse condemnation or similar causes of action, Declarant acknowledges the foregoing facts and understandings in this Declaration and agrees to the release and waiver set forth in ***Section 14 below***. In addition, Declarant will provide the following disclosure to lessees prior to signing a lease or purchasers of condominium units at the time required by California Civil Code Section 1102.3:

> "DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S): You are purchasing or leasing property that is adjacent to or nearby to the existing American Industrial Center (AIC). As of [DATE], the AIC is located in a PDR-1-G (Production, Distribution and Repair – General) zoning district and contains light industrial, as well as office, retail, and other uses. Consistent with such zoning, the AIC operations generate noise associated with truck traffic and loading activities at the AIC and other impacts at all hours of the day, seven days per week, even if operating in conformance with existing laws and regulations and locally accepted customs and standards for operations of such uses. California law provides: "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance." (Cal. Civil Code Section 3482). You should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living

near the AIC, and understand that the AIC is not required to alter its current or future activities undertaken in compliance with applicable laws and zoning regulations after construction of your building."

4. **No Prepayment of Services Special Taxes or Facilities Special Taxes**. Declarant must disclose to purchasers of condominium units that they are prohibited from prepaying Services Special Taxes and Facilities Special Taxes (as each such term is defined in the Financing Plan and Acquisition Agreement between [Declarant] and Port, dated as of [_____, 2019] (the "**Financing Plan**")). Upon sale of each condominium unit, Declarant will deliver a copy of the Financing Plan to each new buyer of a condominium unit.

5. Declarant agrees and acknowledges that it will pay an amount equivalent to Services Special Taxes that would have been levied if the community facility districts ("**CFDs**") applicable to the Property or their taxing powers are ever eliminated or reduced for any reason, including any vote of the qualified electors in the CFD applicable to the Property.

6. **Mitigation Monitoring and Reporting Program**. Declarant will comply with the mitigation measures set forth in the Mitigation Monitoring and Reporting Program ("**MMRP**") that the San Francisco Planning Commission adopted by Motion No. 19977 and the Port Commission adopted by Resolution No. 17 43.

7. **Limitation on Off-Street Parking**. Declarant will comply with a permanent limit on the number of off-street parking spaces allocated to the Property, to the lesser of:

(a) six-tenths (6/10) off-street parking spaces per one (1) residential unit and one (1) off-street parking space per 1,500 sq. ft. of gross floor area for office (the "**Maximum Off-Street Parking Spaces**");

(b) if the Residential Project is built in one phase, the number of parking spaces actually constructed on the Property at the time of the issuance of a certificate of occupancy for the Residential Project; or

(c) if the Residential Project is built in two different phases and

(i) only the 1st phase of the Residential Project ("**1st Phase**") is built, the lesser of the Maximum Off-Street Parking Spaces for the 1st Phase or the total number of parking spaces actually constructed at the time of issuance of a certificate of occupancy for the 1st Phase; or

(ii) both phases of the Residential Project is built, the lesser of the Maximum Off-Street Parking Spaces for the Residential Project or the total number of parking spaces actually constructed at the time of issuance of a certificate of occupancy for the Residential Project.

8. **Residential Parking Permits**. Declarant acknowledges that residents of the Residential Project will not be eligible for Residential Parking Permits under Transportation Code Section 905.

9. **Required Provisions in Declaration of Conditions, Covenants, and Restrictions or Property Management Agreement**. Declarant will include in a Declaration of Conditions, Covenants and Restrictions (or equivalent instrument as determined by Declarant) (the "**CC&Rs**") that is recorded against the Property and runs with the land, or property management agreement if the Property is operated as a residential rental project, provisions for each of the following items set forth in this ***Section 9*** (collectively referred to as "**Required Provisions**"). Prior to the adoption of the CC&Rs or entering into the property management agreement, as applicable, Declarant will provide Port the Required Provisions for Port's review and approval, in its sole discretion. The Required Provisions may not be amended without the prior written consent of Port, in its sole discretion.

(a) ***American Industrial Center***.

(i) Establishment of a point of contact within the homeowners association and/or property manager to receive any resident complaints regarding noise or other issues related to AIC operations prior to any such complaints being submitted to the AIC. Such point of contact shall be responsible for providing to complainant a copy of the DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S);

(ii) Establishment of a "meet and confer" process to (a) receive any resident complaints regarding noise or other issues related to AIC operations, and (b) consistent with the DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S), resolve directly with AIC such complaints, with the goal of resolving informally between the Property and AIC any resident complaints prior to the complainant's filing of a formal complaint with the City or other regulatory agency;

(iii) Designation of a representative of the condominium association and/or property owner/management company to act as a liaison with the AIC. The liaison shall promote open and regular communication between the residential project and AIC. The liaison shall work with appropriate AIC representatives to ensure that both the occupants of the Property and AIC (and their respective residents/tenants) receive advance notice of events that may affect residents or AIC tenants, and to minimize the disruption associated with such events.

(b) ***No Prepayment of Services Special Taxes or Facilities Special Taxes***. A prohibition on prepayment of Services Special Taxes and Facilities Special Taxes by owners of condominium units.

(c) ***Mitigation Monitoring and Reporting Program***. A general obligation to comply with the MMRP and specifically identifying particular mitigation measures in the MMRP that owners of condominium units and renters must comply with.

(d) ***Residential Parking Permits***. The residents of the Residential Project will not be eligible for Residential Parking Permits under Transportation Code section 905 and may not apply for such permits.

(e) ***Services Special Taxes***. With respect to owners of condominium units only, the obligation to pay an amount equivalent to Services Special Taxes that would have been levied if the CFDs applicable to the Property or their taxing powers are ever eliminated or the amount of Services Special Taxes is reduced for any reason, including any vote of the qualified electors in the CFD applicable to the Property.

10. **Enforcement**. Port will be entitled to any and all rights and remedies available at law or equity in order to enforce its rights under this Declaration, including but not limited to, specific performance.

11. **Notices**. All notices required or allowed hereunder shall be in writing. Notices to Declarant or notices or payment of the Transfer Fees to Port may be given at the following addresses:

To Port:
San Francisco Port Commission
Pier 1
San Francisco, California 94111
Attention: Director of Planning & Development
Telephone: (415) 274-0400

With a Copy To:
San Francisco City Attorney's Office
San Francisco Port Commission
Pier 1
San Francisco, California 94111
Attention: General Counsel
Telephone: (415) 274-0400

To Declarant:

Notices may be given by personal delivery, or sent by reputable overnight delivery service with charges prepaid for next-business-day delivery, or by first class certified U.S. Mail with postage prepaid and return receipt requested. Notices are effective on the earlier of the date received, one business day after transmittal by overnight delivery service, or the third day after the postmark date, as applicable.

12. Third Party Beneficiary. The Parties agree that the City and Port are intended named third party beneficiaries of Declarant's covenants, acknowledgments, agreements, waivers and releases contained in this Declaration.

13. Covenants Run With the Land. The Parties intend and agree that the covenants, acknowledgments, agreements, waivers and releases contained in this Declaration are covenants, not conditions, running with the land and they will, in any event, and without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, be binding for the benefit of the City and Port and will be enforceable by either the City, Port, or both, against Declarant and its successors and assigns and subsequent owners, lessees, and other users of the Property. Notwithstanding anything to the contrary in the foregoing, Port shall have the right to terminate or waive the requirements set forth in this Declaration in writing if such termination or waiver is approved by the Port's Commission in its sole discretion.

14. Release of the City Parties. Declarant, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges, the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, and all of their respective officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns (collectively, the "**City Parties**" and individually, "**City Party**"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, Attorneys' Fees and Costs), whether direct or indirect, known or unknown, foreseen or unforeseen (collectively, "**Claims**"), that Declarant may now have or that may arise on account of or in any way be connected with (A) Declarant's completion of, or failure to complete, all or any part of the PKN Project, (B) Horizontal Developer's completion of, or failure to complete, all or any part of the Horizontal Improvements, (C) Port or the City's failure to complete any part of the Pier 70 Project, (D) the payment by the buyer or seller of any condominium unit of any fees set forth in the Transfer Fee Covenant to be recorded against the Property, (E) the Pier 70 Shipyard, (F) the AIC, (G) hazardous materials, and (H) from any cause in, on, around, under, and pertaining to the Property or the Vertical Project, including all Claims arising from the joint, concurrent, active or passive negligence of any of City Parties, but excluding any intentionally harmful acts committed solely by Port or City. Declarant's release and waiver under this Declaration shall not apply to (a) any Claims resulting from the gross negligence or willful misconduct of any of City Party or (b) any third-party tort Claims arising prior to recordation of this Declaration.

The City Parties would not have been willing to sell the Property to Declarant in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the City Parties, and Declarant expressly assumes the risk with respect thereto. Accordingly, as a material part of the consideration for the sale of the Property to Declarant, Declarant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the City Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, the City Parties arising out of this Declaration or the uses authorized hereunder, including, any interference with uses conducted by Declarant pursuant to this Declaration regardless of the cause, and whether or not due to the negligence of the City Parties.

Declarant understands and expressly accepts and assumes the risk that any facts concerning the Claims released, waived, and discharged in this Declaration includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated Claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Declaration will remain effective. Accordingly, with respect to the Claims released, waived, and discharged in this Declaration, Declarant expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.
>
> BY PLACING ITS INITIALS BELOW, DECLARANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT DECLARANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS DECLARATION WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.
>
> INITIALS: DECLARANT:_____

15. Liquidated Damages. [Note: include provisions of Section 19.3(f) of the VDDA once finalized.]

16. Miscellaneous.

16.1. Governing Law. The provisions hereof shall be construed and enforced in accordance with the laws of the State of California.

16.2. Attorneys' Fees. In any action or proceeding to seek a declaration of rights hereunder, to enforce the terms hereof or to recover damages or other relief for alleged breach, then the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs, including experts' fees, costs incurred in connection with (a) post judgment motions, (b) appeals, (c) contempt proceedings, (d) garnishments and levies, (e) debtor and third-party examinations, (f) discovery, and (g) bankruptcy litigation. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing, perfecting and executing such judgment. A party shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. For purposes of this Declaration, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly

charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

16.3. Time. Time is of the essence of each and every provision hereof.

16.4. Disclaimers. Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

16.5. Construction. Whenever the context of this Declaration requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Descriptive section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

16.6. Waiver. Any waiver with respect to any provision of this Declaration shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this Declaration by a party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Declaration. No waiver will be interpreted as a continuing waiver.

16.7. Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

16.8. Severability. Invalidation of any portion or provision of this Declaration by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect to the maximum extent permitted by law.

16.9. No Dedication. This Declaration is not intended to create any rights in the public.

[Remainder of this Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties have executed this Declaration as of the day and year first above written.

Port:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

Declarant:

[_____]

By: _____
Name:
Title:

EXHIBIT A

PROPERTY DESCRIPTION

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT C

FORM OF QUITCLAIM DEED

Recording Requested by:

When Recorded Mail to:

Assessor Parcel Number (APN): BLOCK 3941 LOT 34; BLOCK 3941 LOT 36; BLOCK 3941 LOT 38;
)
CTC ESC #

QUITCLAIM DEED

Please fill in Document Title(s) above this line)

This document is exempt from the $75 Building Homes and Jobs Act Fee (per Government Code §27388.1) because:

□ Document is a transfer of real property subject to the imposition of transfer tax

□ Document is a transfer of real property that is a residential dwelling to an owner-occupier

□ Document is recorded in connection with an exempt transfer of real property (i.e., subject to transfer tax or owner-occupied). If not recorded concurrently, provide recording date and document number of related transfer document:
Recording date _____ Document Number _____

□ The $225 per transaction cap is reached

□ Document is not related to real property

This page added to provide adequate space for recording information
(additional recording fee applies)

Documentary Transfer Tax of $_____ based upon full market value of the property without deduction for any lien or encumbrance

QUITCLAIM DEED
[(Assessor's Parcel No. PORTION OF LOT 026, BLOCK 4110 (FORMERLY PORTION OF LOT 001, BLOCK 4110 AND VACATED PORTION OF MICHIGAN STREET, UNASSESSED))

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), operating by and through the San Francisco Real Estate Division ("RED"), and the City, operating by and through the SAN FRANCISCO PORT COMMISSION ("Port" and, collectively with City, "Grantor"), pursuant to Resolution No. _____, adopted by the Board of Supervisors on _____, 20___ and approved by the Mayor on _____, 20___, subject to the reservations set forth herein, hereby RELEASE, REMISE AND QUITCLAIM to _____ ("Grantee"), any and all right, title and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property").

Executed as of this _____ day of _____, 20__.

CITY AND COUNTY OF SAN FRANCISCO,
a Charter City and County, acting by and
through the San Francisco Real Estate Division

By: _____
Andrico Q. Penick
Director of Property

CITY AND COUNTY OF SAN FRANCISCO,
acting by and through the SAN FRANCISCO
PORT COMMISSION, pursuant to Chapter 477,
statutes of 2011 (AB418)

By: _____
Elaine Forbes
Executive Director

Approved by Port Resolution No. ____ and
Board Resolution No. _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: _____
[NAME]
City Engineer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of the Property

[(Add the following clause at the end of the legal description):

APPROVED AS TO LEGAL DESCRIPTION:

_____
[NAME]
City and County Surveyor]

EXHIBIT B

SCOPE OF DEVELOPMENT

A. VERTICAL PROJECT

1. The Vertical Project will include the design, development, permitting and construction of a residential condominium project in accordance with the Project Requirements.

2. The Vertical Project will include the following uses:
   - Up to 261,700 gross square feet of residential uses, consistent with the Pier 70 EIR, with net saleable square footage divided into approximately 240 to 270 residential units in a range of sizes, which may include studios, 1 bedroom, 2 bedroom and 3 bedroom layouts, along with service and amenity areas for residents.
   - Up to 13,200 gross square feet of non-residential uses, consistent with the Pier 70 EIR, consisting of:
     - Up to 6,600 gross square feet of Retail/Arts/Light Industrial space; and
     - Up to 6,600 gross square feet of commercial space, which may include office as well as Retail/Arts/Light Industrial uses.
   - Accessory parking of up to .6 spaces/residential unit and up to 1 space/1,500 square feet of office Gross Floor Area.

3. The Vertical Project will be designed to provide attractive, high quality residential condominium units in a variety of unit configurations, with common and private open spaces in accordance with the requirements of the Design for Development, and resident amenities and services appropriate to the scale of the Vertical Project.

4. The Vertical Project may be constructed in two development phases, provided that the first phase of the Vertical Project shall consistent of at least 104,680 square feet of residential Gross Floor Area. Each phase may involve one or more site permits and addenda as permitted under the San Francisco Building Code.

B. PKN HORIZONTAL IMPROVEMENTS

The PKN Horizontal Improvement consists of four major elements of horizontal improvements. This Scope of Development for the PKN Horizontal Improvements is a written narrative, broadly described since the basis of these requirements are conceptual only at this time. The Developer must undertake all the planning, design, project management, permitting, contracting, construction management, and administrative tasks needed for a fully completed street, plazas, and electrical work, consistent with the Development Documents, Project Requirements, City standards, policies, and regulations, and this Agreement.

Mapping conditions from the Tentative Transfer Map have been approved with one condition affecting the PKN Project occurring along Michigan Street. The PKN Tentative Map and PKN

Final Map may trigger new construction related requirements that affect the Scope of Development for the PKN Horizontal Improvements.

1. **Michigan Street ROW**: a new segment of Michigan Street from 20th Street southerly to 150' southerly, as further shown in the shown in the Streetscape Master Plan. The Michigan Street ROW is contemplated to be under the Port's jurisdiction for permitting, operations, and maintenance. Preliminary engineering shows a connection to 21st Street to be infeasible, therefore requiring this street to be a dead-end. This section of Michigan Street must comply with California Fire Code, Appendix D, limiting the length and width of the roadway for fire access purposes in the event a turn-around is not available.

   Vehicle turning movements were analyzed for the projected cross sections including loading for WB-50 type of trucks needed for the Historic Core Project's uses (PDR) and operational needs. Designs must be consistent with the approved turning movements (WB-50 trucks and Fire Department equipment) as demonstrated in the SSMP.

   The Scope of Work for the Michigan Street Segment will include:

   - Site preparation work, including demolition, rough grading, and contaminated materials disposal;
   - Trunk Utility tie-in to main line systems (excluding service laterals); Catch basins and drainage piping; Electrical substructures for roadway lighting;
   - Utilities needed to serve the building(s) including sewer, telecommunications, electricity, and gas tie-ins are non-reimbursable costs.
   - Curb and gutter; Roadway concrete base and asphalt concrete; Sidewalk including curb ramps.
   - Undergrounding of existing overhead utilities in Michigan Street adjacent to PKN (i.e., for both Michigan Street ROW and Michigan Street Plaza).
   - Realignment of existing underground utilities and surface vaults on Michigan Street adjacent to PKN, if determined to be necessary by the Port, and relocation of any existing utilities under the PKN development parcel related to the surface vaults on Michigan Street.
   - Related to the Switchgear Facilities described in B4 below, Vertical Developer will cooperate with SFPUC and PG&E in the development of electrical substructures for SFPUC and PG&E feeder electrical systems; Provide conduits and pullboxes to intercept existing overhead PGF&E feeders to route service to new Switchgear Facilities; Provide conduits and pullboxes to reconnect Historic Core Project, Pier 70 Shipyard and Crane Cove Park load;
   - Roadway lighting; and
   - Planting strip, soils, trees and plantings; irrigation systems

Planning Budget: $4.284M, subject to actual costs

2. **Michigan Street Plaza:** a new segment of Michigan Street from the future 21st Street northerly to the Michigan Street ROW. The Scope of Work for the Michigan Street Plaza will include:

- Site preparation work including demolition, rough grading, and contaminated materials disposal;
- Raised plaza relative to the Michigan Street ROW, with bollard or removeable bollards; optional driveway and truck access to this area;
- Sidewalk, curb and gutter; plaza paving;
- Retaining wall adjacent to future 21st Street with pedestrian through access to future 21st Street;
- Pedestrian and accent lighting; and
- Furnishing elements.

Budget: Included in budget for Michigan Street ROW.

3. **20th Street Plaza:** an approximately 0.3-acre plaza at the southwest corner of Illinois and 20th Streets as further described in the Design for Development. The Scope of Work for the 20th Street Plaza will include:
   - Site preparation work including demolition, rough grading, and contaminated materials disposal;
   - Relocation of existing utilities located within the site, if needed to serve uses outside of the 20th Street Plaza
   - Pedestrian and accent lighting;
   - Plaza paving, with highlight paving;
   - Permeable paving;
   - Planter walls, decks and terraces;
   - Standard and featured furnishing elements
   - Planting areas, soils, and vegetation;
   - Decks and terraces;
   - Storm drain systems;
   - Installation/repair/replacement of curbs and sidewalks; and
   - Related to the Switchgear Facilities described in B4 below, Vertical Developer will cooperate with SFPUC and PG&E in the development of electrical substructures for SFPUC and PG&E feeder electrical systems; Provide conduits and pullboxes to intercept existing overhead PGF&E feeders to route service to new Switchgear Facilities.

Planning Budget: $3.428M, subject to actual costs

4. **Switchgear Facilities** – As provided in Section 12.7, there are two options for the installation of electrical switchgear facilities needed to distribute electricity to the 28-Acre Site Project and to existing Port tenants at the Historic Core Project, Pier 70 Shipyard, and Crane Cove Park. Switchgear Option 1 includes installation of up to two pad-mounted switchgear facilities in the Michigan Street Plaza by SFPUC. Switchgear Option 2 includes pole-mounted switchgear facilities in the vicinity of Parcel J on the Final Transfer Map.

   In the event Port and SPFUC select Switchgear Option 1 pursuant to Section 12.7, Vertical Developer will construct a decorative screen/enclosure around the Switchgear Facilities, subject to Port's design review approval as part of design of the Michigan Street Plaza.

Vertical Developer shall pay at its sole cost and expense up to Two Hundred Fifty Thousand and 00/100 Dollars ($250,000) in Hard Costs and Soft Costs (as defined in the Financing Plan) for Switchgear Option 1, with all additional costs reimbursed as PKN Capital Costs under the Financing Plan.

In the event Port and SFPUC elect Switchgear Option 2 pursuant to Section 12.7, Vertical Developer will pay SFPUC and PG&E (without reimbursement) the lesser of (a) costs of relocating the existing temporary poles and pole-mounted Switchgear Facilities, or (b) $250,000. Vertical Developer's Scope of Work may include additional subsurface improvements, such as extended dry utility trench, under the future 21st Street and along Michigan Street south of 21st Street in connection with Switchgear Option 2; any such costs will be eligible PKN Capital Costs, subject to reimbursement as provided for in the Financing Plan. The design and location of underground electrical utility vaults and dry utility trenches in Michigan Street and, if required, under 21st Street, are subject to Port approval in its sole discretion, in consultation with the Historic Core Project and the Horizontal Developer, in connection with the approval of the PKN Tentative Map.

Notwithstanding the above, on or after October 1, 2019, if Vertical Developer has not been able to secure from Port, SFPUC, and PG&E approval of preliminary plans and written commitment to an approval and construction schedule in form and substance acceptable to Vertical Developer for the selected Switchgear Option 1 or Switchgear Option 2, then Vertical Developer may cease pursuing development of the selected Switchgear Option and instead apply to PG&E, at its own cost and expense (without any reimbursement) for approvals to underground the overhead electrical lines on Michigan Street adjacent to PKN, so long as such undergrounding will not adversely affect the future development of Switchgear Option 1 or Switchgear Option 2. Vertical Developer's determination to underground the overhead utilities will not release Vertical Developer of its obligation to pay the lesser of $250,000 or the actual cost for Switchgear Option 1 or Switchgear Option 2. Vertical Developer shall utilized the dry utility trench approved in connection with the PKN Tentative Map to underground the PG&E overhead wires; payments to PG&E to reimburse PG&E's costs of undergrounding wires shall be at Vertical Developer's sole cost and expense and shall not be reimbursable as a PKN Capital Cost under the Financing Plan.

In the event work on a Switchgear Option has not commenced by the Port or SFPUC prior to receipt of the Substantial Completion Determination for the Michigan Street Plaza, subject to the provisions of the last paragraph of Section 8.3, Vertical Developer shall pay Port a Switchgear fee of $250,000 within thirty days of receipt of the Substantial Completion Determination for the Michigan Street Plaza. The Switchgear Fee shall be refunded to Vertical Developer within five years of Vertical Developer's payment of the Switchgear Fee if (a) neither Switchgear Option has been constructed and (b) property within the SUD is served by a distribution line constructed by the SFPUC, referred to as the SFPUC Bay Corridor Transmission and Distribution Line.

EXHIBIT U - DRAFT FINAL TRANSFER MAP

OWNER'S STATEMENT:

WE HEREBY STATE THAT WE ARE THE ONLY OWNERS OF AND HOLDERS OF RECORD TITLE INTEREST IN THE REAL PROPERTY SUBDIVIDED AND SHOWN UPON THIS MAP, AND DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP.

IN WITNESS THEREOF, WE, THE UNDERSIGNED, HAVE CAUSED THIS STATEMENT TO BE EXECUTED.

OWNER: CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION, AS TRUSTEE, PURSUANT TO THE BURTON ACT AND CHAPTER 477, STATUTES OF 2011 (AB418)

BY: _____
ELAINE FORBES
EXECUTIVE DIRECTOR

OWNER: CITY AND COUNTY OF SAN FRANCISCO, OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION, PURSUANT TO CHAPTER 477, STATUTES OF 2011 (AB418)

BY: _____
ELAINE FORBES
EXECUTIVE DIRECTOR

OWNER: CITY AND COUNTY OF SAN FRANCISCO, A CHARTER CITY AND COUNTY, ACTING BY AND THROUGH THE SAN FRANCISCO REAL ESTATE DIVISION

BY: _____
CLAUDIA J. GORHAM
ASSISTANT DIRECTOR OF PROPERTY

OWNER'S ACKNOWLEDGMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF _____
COUNTY OF _____

ON _____2019 BEFORE ME, _____,

PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF _____ THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL.

SIGNATURE: _____

NOTARY PUBLIC, STATE OF _____ COMMISSION NO.: _____

MY COMMISSION EXPIRES: _____

COUNTY OF PRINCIPAL PLACE OF BUSINESS: _____

OWNER'S ACKNOWLEDGMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF _____
COUNTY OF _____

ON _____2019 BEFORE ME, _____,

PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF _____ THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL.

SIGNATURE: _____

NOTARY PUBLIC, STATE OF _____ COMMISSION NO.: _____

MY COMMISSION EXPIRES: _____

COUNTY OF PRINCIPAL PLACE OF BUSINESS: _____

TAX STATEMENT:

I, ANGELA CALVILLO, CLERK OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DO HEREBY STATE THAT THE SUBDIVIDER HAS FILED A STATEMENT FROM THE TREASURER AND TAX COLLECTOR OF THE CITY AND COUNTY OF SAN FRANCISCO, SHOWING THAT ACCORDING TO THE RECORDS OF HIS OR HER OFFICE THERE ARE NO LIENS AGAINST THIS SUBDIVISION OR ANY PART THEREOF FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES, OR SPECIAL ASSESSMENTS COLLECTED AS TAXES.

DATED _____ DAY OF _____, 2019.

_____
CLERK OF THE BOARD OF SUPERVISORS
CITY AND COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

CLERK'S STATEMENT:

I, ANGELA CALVILLO, CLERK OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, HEREBY STATE THAT SAID BOARD OF SUPERVISORS BY ITS MOTION NO. _____, ADOPTED_____, 2019, APPROVED THIS MAP ENTITLED "FINAL TRANSFER MAP 9597".

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY HAND AND CAUSED THE SEAL OF THE OFFICE TO BE AFFIXED.

BY: _____ DATE: _____.
CLERK OF THE BOARD OF SUPERVISORS
CITY AND COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

APPROVALS:

THIS MAP IS APPROVED THIS _____ DAY OF _____, 2019

BY ORDER NO. _____.

BY: _____ DATE: _____

MOHAMMED NURU
DIRECTOR OF PUBLIC WORKS AND ADVISORY AGENCY
CITY AND COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

APPROVED AS TO FORM:

DENNIS J. HERRERA, CITY ATTORNEY

BY: _____

DEPUTY CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISOR'S APPROVAL:

ON _____, 2019, THE BOARD OF SUPERVISOR'S OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA APPROVED AND PASSED

MOTION NO. _____, A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE BOARD OF SUPERVISOR'S IN FILE NO. _____.

CITY AND COUNTY SURVEYOR'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP; THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE CALIFORNIA SUBDIVISION MAP ACT AND ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH; AND THAT I AM SATISFIED THIS MAP IS TECHNICALLY CORRECT.

BRUCE R. STORRS, CITY AND COUNTY SURVEYOR
CITY AND COUNTY OF SAN FRANCISCO

BY: _____ DATE: _____

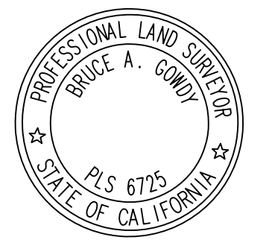
BRUCE R. STORRS L.S. 6914

SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF FC PIER 70, LLC, ON JULY 1, 2015. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

BY: Bruce A. Gowdy _____ DATE: JANUARY 3, 2019

BRUCE A. GOWDY
PLS No. 6725



RECORDER'S STATEMENT:

FILED THIS _____ DAY OF _____, 2019,

AT _____ M. IN BOOK _____ OF MAPS, AT PAGES _____, AT THE REQUEST OF MARTIN M. RON ASSOCIATES.

SIGNED: _____

COUNTY RECORDER
CITY AND COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

FINAL TRANSFER MAP 9597

FOR PURPOSES OF FINANCING AND/OR CONVEYANCING ONLY

A MERGER AND 52 LOT SUBDIVISION OF PORTIONS OF THOSE CERTAIN PATENTS ENTITLED, "STATE OF CALIFORNIA, TRUST TERMINATION PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672970 AND "STATE OF CALIFORNIA, PUBLIC TRUST PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672971, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

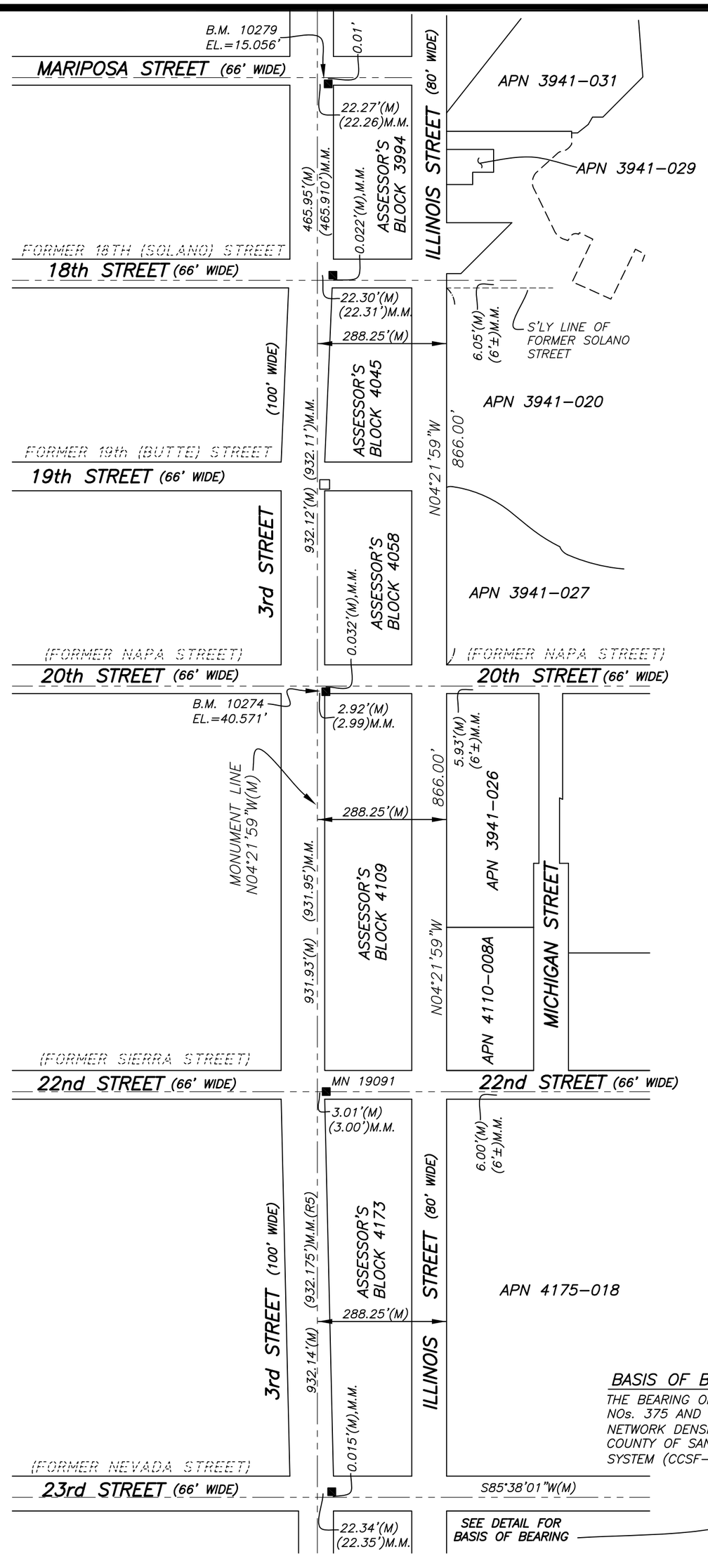
ALSO BEING A PORTION OF THE LANDS AS SHOWN ON THAT RECORD OF SURVEY, RECORDED SEPTEMBER 17, 2018 IN BOOK HH OF SURVEY MAPS, PAGES 46 THROUGH 53.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

MARTIN M. RON ASSOCIATES, INC.
Land Surveyors
859 HARRISON STREET, SUITE 200
San Francisco, California 94107

JANUARY 2019 *SHEET 1 OF 10*

APNs: 3941–020, 022, 023, 024, 025, 026



DOCUMENT REFERENCES

1. "COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT FOR PIER 70", (TRUST EXCHANGE), RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672968, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

2. THAT CERTAIN "QUITCLAIM DEED", FROM THE CITY & COUNTY OF SAN FRANCISCO, BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION, TO THE STATE OF CALIFORNIA, BY AND THROUGH THE STATE LANDS COMMISSION, RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672969, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

3. THAT CERTAIN PATENT ENTITLED, "STATE OF CALIFORNIA, TRUST TERMINATION PATENT", FROM THE STATE OF CALIFORNIA, BY AND THROUGH THE STATE LANDS COMMISSION, TO THE CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION, RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672970, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

4. THAT CERTAIN PATENT ENTITLED, "STATE OF CALIFORNIA, PUBLIC TRUST PATENT", FROM THE STATE OF CALIFORNIA, BY AND THROUGH THE STATE LANDS COMMISSION, TO THE CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION, RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672971, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

5. "COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY", RECORDED AUGUST 19, 2016, IN DOCUMENT NO. 2016–K308328, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

6. "DEVELOPMENT AGREEMENT", RECORDED MAY 25, 2018, IN DOCUMENT NO. 2018–K619432, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

7. "DISPOSITION AND DEVELOPMENT AGREEMENT", RECORDED MAY 25, 2018, IN DOCUMENT NO. 2018–K619435, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

8. "MEMORANDUM OF MASTER LEASE", RECORDED MAY 25, 2018, IN DOCUMENT NO. 2018–K619436, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

9. "NOTICE OF PENDING ACTION UNDER DESTROYED LAND RECORDS RELIEF LAW", RECORDED SEPTEMBER 13, 2018 IN DOCUMENT NO. 2018–K672682, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

10. "DECLARATION OF RESTRICTIONS AND LOT TIE AGREEMENT FOR BUILDING 11 LOTS, PIER 70 TRANSFER MAP NO. 9597", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019–K718818, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

11. "DECLARATION OF RESTRICTIONS AND LOT TIE AGREEMENT FOR BUILDING 21 LOTS, PIER 70 TRANSFER MAP NO. 9597", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019–K718820, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

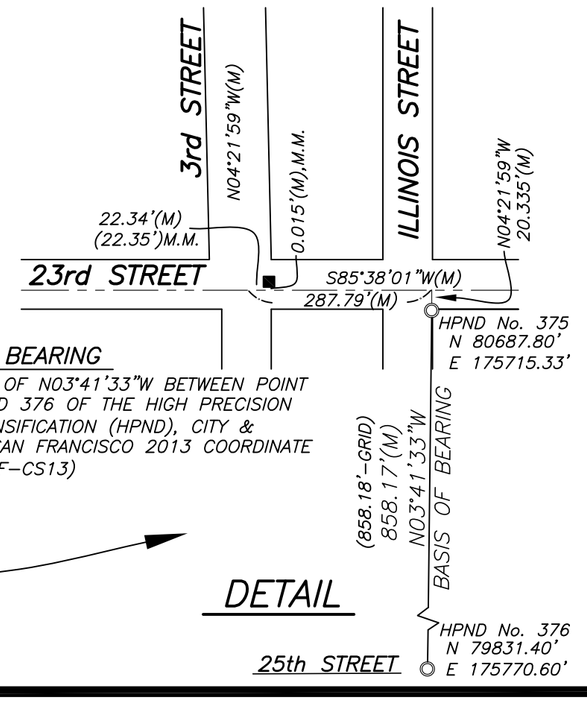
12 "DECLARATION OF RESTRICTIONS AND LOT TIE AGREEMENT FOR PUMP STATION LOTS, PIER 70 TRANSFER MAP NO. 9597", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019–K718819, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

13. "MEMORANDUM OF MOU", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019–K718824, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

14. "DECLARATION OF RESTRICTIONS"", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019–K718821, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

15. "DECLARATION OF RESTRICTIONS"", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019–K718822, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

16. "DECLARATION OF RESTRICTIONS"", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019–K718823, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.



BASIS OF BEARING

THE BEARING OF N03°41'33"W BETWEEN POINT NOs. 375 AND 376 OF THE HIGH PRECISION NETWORK DENSIFICATION (HPND), CITY & COUNTY OF SAN FRANCISCO 2013 COORDINATE SYSTEM (CCSF–CS13)

DETAIL

MAP REFERENCES

R1. RECORD OF SURVEY, RECORDED APRIL 23, 2002 IN BOOK AA OF MAPS, PAGES 13–14, IN THE OFFICE OF THE CITY & COUNTY RECORDER. A SUBSEQUENT CORNER RECORD WAS FILED ON JUNE 12, 2012.

R2. RECORD OF SURVEY No. 6938, RECORDED FEBRUARY 27, 2012 IN BOOK DD OF SURVEY MAPS, PAGES 198–199, IN THE OFFICE OF THE CITY & COUNTY RECORDER.

R3. "RECORD OF SURVEY #8080, OF THE SAN FRANCISCO HIGH PRECISION GNSS NETWORK SURVEY...", RECORDED APRIL 4, 2014 IN BOOK EE OF SURVEY MAPS, PAGES 147–157, IN THE OFFICE OF THE CITY AND COUNTY RECORDER.

R4. THE CITY OF SAN FRANCISCO MONUMENT MAP NO. 324, ON FILE IN THE OFFICE OF THE CITY & COUNTY SURVEYOR.

R5. THE CITY OF SAN FRANCISCO MONUMENT MAP NO. 326, ON FILE IN THE OFFICE OF THE CITY & COUNTY SURVEYOR.

R6. "RECORD OF SURVEY 9584", RECORDED SEPTEMBER 17, 2018, BOOK HH OF SURVEY MAPS, PAGES 46–53, IN THE OFFICE OF THE CITY & COUNTY RECORDER.

PROJECT DATUMS, REFERENCE SYSTEMS & PROJECTION

GEOMETRIC DATUM: NORTH AMERICAN DATUM OF 1983: NAD83(2011) 2010.00 EPOCH

REFERENCE NETWORK: "CCSF–2013 HPN" (HIGH PRECISION NETWORK PER RECORD OF SURVEY #8080)

PROJECTION: THE PLANE COORDINATES ARE BASED ON A LOCAL GRID COORDINATE SYSTEM KNOWN AS THE CITY & COUNTY OF SAN FRANCISCO 2013 COORDINATE SYSTEM (CCSF–CS13). SEE RECORD OF SURVEY #8080 RECORDED IN BOOK EE OF SURVEY MAPS, PAGE 147–157, S.F.C.R. AND THE CCSF DPW WEB SITE FOR PROJECTION PARAMETERS.

HORIZONTAL CONTROL: THE HORIZONTAL DATUM WAS RECOVERED BASED ON HPND POINTS 375 AND 376 SHOWN HEREON.

VERTICAL DATUM: "CCSF 2013 NAVD88 VERTICAL DATUM" (CCSF–VD13)

REFERENCE NETWORK: CCSF 2013 HIGH PRECISION LEVELING NETWORK

VERTICAL CONTROL: THE VERTICAL DATUM WAS RECOVERED BASED ON BENCHMARKS 10279 AND 10274, SHOWN HEREON AND DESCRIBED ON THE CCSF DPW WEB SITE.

NOTES:

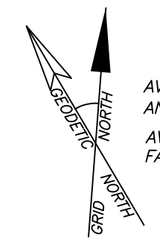
1.) ALL DISTANCES ARE SHOWN IN FEET AND DECIMALS THEREOF.

2.) ALL ANGLES ARE 90 DEGREES UNLESS OTHERWISE NOTED.

3.) DISTANCES SHOWN HEREON ARE GROUND DISTANCES. TO CONVERT TO GRID DISTANCES (SFCS13), MULTIPLE GROUND DISTANCES BY 1.00001193.

4.) THE MEAN HIGH WATER (MHW) LINE SHOWN HEREON WAS DETERMINED TO BE AT AN ELEVATION OF 5.8 FEET (NAVD88 DATUM) AS SHOWN ON THAT "RECORD OF SURVEY 9584", RECORDED SEPTEMBER 17, 2018, BOOK HH OF SURVEY MAPS, PAGES 46–53, IN THE OFFICE OF THE CITY & COUNTY RECORDER.

5. THE LINE OF THE PUEBLO LANDS OF SAN FRANCISCO (PUEBLO LINE OF 1883) WAS PLOTTED FROM THE ORIGINAL FIELD NOTES OF THE PUEBLO LANDS SURVEY, BY F. VON LEICHT, DEPUTY SURVEYOR, DATED DECEMBER 1883.



AVG. CONVERGENCE ANGLE=0°02'30"

AVG. COMBINED FACTOR=1.00001193

NOT TO SCALE

LEGEND

APN 0757–028	ASSESSOR'S PARCEL NUMBER (BLOCK–LOT) (FOR TAXATION PURPOSES ONLY)
B.M.	BENCH MARK
EL.	ELEVATION
O.R.	OFFICIAL RECORDS
DOC.	DOCUMENT
(2.99')	RECORD DIMENSION WHEN IN DISCREPANCY WITH MEASURED DIMENSION
MN	MONUMENT IDENTIFICATION PER CITY & COUNTY OF SAN FRANCISCO
M.M.	MONUMENT MAP
(M)	MEASURED
PL	PROPERTY LINE
P.O.B.	POINT OF BEGINNING–LEGAL DESCRIPTION
N.A.P.	NOT A PART OF THIS SUBDIVISION
MAPS/S.M.	RECORD OF SURVEY MAP
■	FOUND 2–1/2" BRASS DISK, "LS 4559" IN STANDARD MONUMENT WELL, PER CITY MONUMENT MAP
□	MONUMENT PER CITY MONUMENT MAP–NOT FOUND
HPND NO. 375	FOUND HIGH PRECISION NETWORK DENSIFICATION (SFCS13) MONUMENT; ANCHOR SCREW & WASHER, STAMPED "CCSF CONTROL 375"
○	NAIL & 3/4" BRASS TAG "PLS 6725" PER DD S.M. 198 (UNLESS OTHERWISE NOTED)–NOT FOUND
●	FOUND NAIL/RIVET & 3/4" BRASS TAG "PLS 6725" PER DD S.M. 198 OR CORNER RECORD OF AA MAPS 13, LOT 07 –AS NOTED
– – – – –	PERIMETER BOUNDARY LINES OF PIER 70
——— – – ———	CITY MONUMENT LINE
———	STREET R/W LINE/PARCEL LINE/LOT LINE

BASIS OF SURVEY:

THE MONUMENT LINE ON 3rd STREET BETWEEN 23rd STREET AND MARIPOSA STREET, AS SHOWN ON THE CITY OF SAN FRANCISCO MONUMENT MAPS NOs. 324 AND 326, ON FILE IN THE OFFICE OF THE CITY & COUNTY SURVEYOR. THIS SURVEY MEASURED A BEST–FIT MONUMENT LINE, THE MAXIMUM DEVIATION OF THE MONUMENTS TO THE BEST–FIT MONUMENT LINE, COMPARED TO THE RECORD DISTANCES, IS NO GREATER THAN 0.01', WITH THE EXCEPTION OF THE MONUMENT AT 20th STREET, HAVING A DEVIATION OF 0.07'.

BASIS OF ELEVATION:

ELEVATIONS ARE BASED UPON BENCHMARK 10279 (ELEV.=15.056') AND BENCHMARK 10274 (ELEV.=40.571'), CCSF 2013 NAVD88 VERTICAL DATUM (SFVD13) AS SHOWN HEREON.

FINAL TRANSFER MAP 9597

FOR PURPOSES OF FINANCING AND/OR CONVEYANCING ONLY

A MERGER AND 52 LOT SUBDIVISION OF PORTIONS OF THOSE CERTAIN PATENTS ENTITLED, "STATE OF CALIFORNIA, TRUST TERMINATION PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672970 AND "STATE OF CALIFORNIA, PUBLIC TRUST PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672971, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

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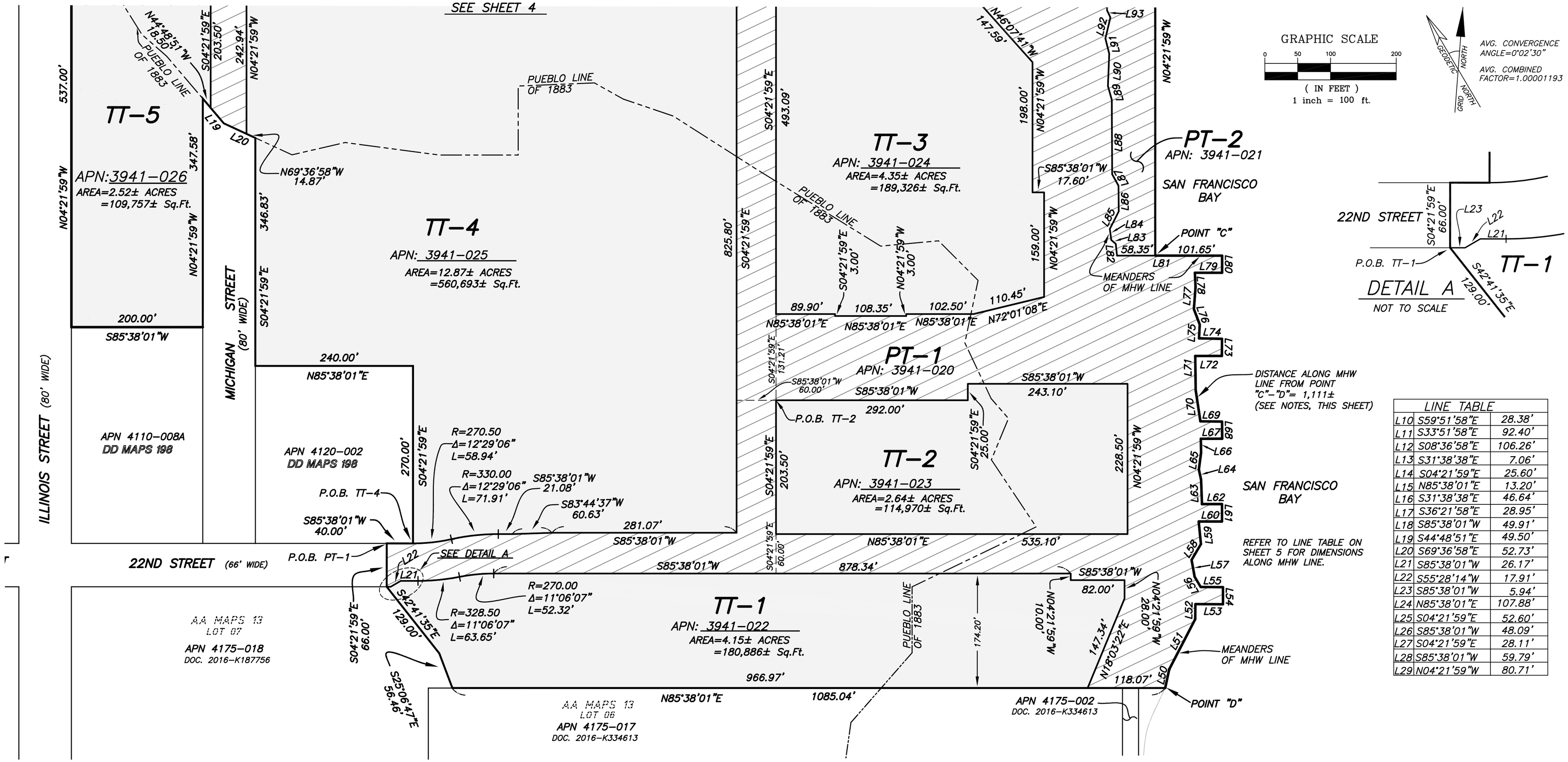
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

MARTIN M. RON ASSOCIATES, INC.
Land Surveyors
859 HARRISON STREET, SUITE 200
San Francisco, California 94107

JANUARY 2019 SHEET 2 OF 10

APNs: 3941–020, 022, 023, 024, 025, 026



LINE TABLE		
L10	S59°51'58"E	28.38'
L11	S33°51'58"E	92.40'
L12	S08°36'58"E	106.26'
L13	S31°38'38"E	7.06'
L14	S04°21'59"E	25.60'
L15	N85°38'01"E	13.20'
L16	S31°38'38"E	46.64'
L17	S36°21'58"E	28.95'
L18	S85°38'01"W	49.91'
L19	S44°48'51"E	49.50'
L20	S69°36'58"E	52.73'
L21	S85°38'01"W	26.17'
L22	S55°28'14"W	17.91'
L23	S85°38'01"W	5.94'
L24	N85°38'01"E	107.88'
L25	S04°21'59"E	52.60'
L26	S85°38'01"W	48.09'
L27	S04°21'59"E	28.11'
L28	S85°38'01"W	59.79'
L29	N04°21'59"W	80.71'

EXISTING PARCELS

(PRIOR TO THE VACATION OF MICHIGAN STREET PER ORD. NO. 265-18)

NOTES:

1. DESIGNATIONS LABELED "POINT "A" THROUGH "POINT "D", AS SHOWN ON SHEETS 3 AND 4, ARE POINTS IDENTIFIED IN THE LEGAL DESCRIPTION OF THE DOCUMENT ENTITLED "STATE OF CALIFORNIA PUBLIC TRUST PATENT", DOC-2018-K672971, FOR THE PURPOSES OF DEFINING THE LENGTHS OF PARCEL LINES ALONG THE MHW LINE REFERENCED THEREIN.

2. THE MEAN HIGH WATER (MHW) LINE SHOWN HEREON IS AT AN ELEVATION OF 5.8 FEET, NAVD88 DATUM (SEE NOTE 4, SHEET 2).

LEGEND

TT-1 — TRUST TERMINATION LANDS PER DOC-2018-K672970

PT-1 — PUBLIC TRUST LANDS PER DOC-2018-K672971

P.O.B. PT-1 — POINT OF BEGINNING OF LEGAL DESCRIPTION PER DOC-2018-K672971

P.O.B. TT-1 — POINT OF BEGINNING OF LEGAL DESCRIPTION PER DOC-2018-K672970

PARCEL	A.P.N.*	ACREAGE	DOC. NUMBER
PT-1	3941-020	29.58±	2018-K672971
PT-2	3941-021	10.85±	2018-K672971
TT-1	3941-022	4.15±	2018-K672970
TT-2	3941-023	2.64±	2018-K672970
TT-3	3941-024	4.35±	2018-K672970
TT-4	3941-025	12.87±	2018-K672970
TT-5	3941-026	2.52±	2018-K672970
TT-6	3941-027	3.42±	2018-K672970
TT-7	3941-028	1.54±	2018-K672970
TT-8	3941-029	0.17±	2018-K672970
R1	3941-030	7.66±	REMAINDER PARCEL
R2	3941-031	3.11±	REMAINDER PARCEL
R3	3941-032	2.65±	REMAINDER PARCEL

* APNs FOR INFORMATIONAL PURPOSES ONLY

FINAL TRANSFER MAP 9597

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CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

MARTIN M. RON ASSOCIATES, INC.
Land Surveyors
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San Francisco, California 94107

JANUARY 2019 *SHEET 3 OF 10*

APNs: 3941-020, 022, 023, 024, 025, 026

HH S.M. 46
APN: 3941–029

S85°23'32"W 367.24'

POINT "A"

L24 L25 L26 L27 L28 L29

P.O.B. TT–8

87.48'

117.00'

18th STREET

TT–8
APN: 3941–029

L146 L147 L148 L149 L150 L151

DISTANCE ALONG MHW LINE FROM POINT "A"–"B"= 992'± (SEE NOTES, SHEET 3)

DESIGN MHW LINE

28.87'

L141 L142 L143 L144 L145

L139 L140

L135 L136 L137 L138

L132 L133 L134

POINT "B"

L130 L131

SEE DETAIL C (SHEET 5)

APPROX. EDGE OF SEAWALL (MHW LINE)

SAN FRANCISCO BAY

CRANE COVE

S85°38'01"W
1410.05'

HH S.M. 46
REMAINDER PARCEL R1
APN: 3941–030

P.O.B. PT–2

S85°38'01"W 694.69'

583.00'
N04°21'59"W

991.22'
N04°21'59"W
696.80'
491.32'

PT–1
(UPLAND TRUST LANDS)
APN: 3941–020
AREA=29.58± ACRES

PT–2
(ADJACENT SUBMERGED LANDS)
APN: 3941–021

433.00'
S04°21'59"E

EDGE OF CONC. DECK & SEAWALL (MHW LINE)

L129

REFER TO LINE TABLE ON SHEET 5 FOR DIMENSIONS ALONG MHW LINE.

L127 L128

L126 EDGE OF METAL STRIP (CONC. DECK (MHW LINE)

DISTANCE ALONG MHW LINE FROM POINT "B"–"C"= 2,221'± (SEE NOTES, SHEET 3)

L124 L125

EDGE OF CONC. DECK (MHW LINE)

L122 L123

MEANDERS OF MHW LINE

L119 L120 L121

L116 L117 L118

L113 L114 L115

L110 L111 L112

L107 L108 L109

L104 L105 L106

L101 L102 L103

L98 L99 L100

L95 L96 L97

L92 L93 L94

L67 L68

S85°38'01"W 330.00'

MHW LINE

SAN FRANCISCO BAY

S85°38'01"W 68.93'

N36°29'34"W 355.42'

S04°12'26"E 301.00'

TT–7
APN: 3941–028
AREA=1.13± ACRES
=49,321± Sq.Ft.

P.O.B. TT–7

258.78'

N85°38'01"E

N04°21'59"W 33.00'

S85°38'01"W 60.00'

N85°38'01"E 280.55'
272.57'

S04°21'59"E 24.00'

S85°38'01"W 292.20'

P.O.B. TT–3

N46°07'41"W 147.59'

198.00'
N04°21'59"W

927.25'
N04°21'59"W

S04°21'59"E 493.09'

TT–3

ILLINOIS STREET (80' WIDE)

L10 L11 L12

PUEBLO LINE OF 1883

N04°21'59"W 407.68'

SEE DETAIL B

PUEBLO LINE OF 1883

N85°38'01"E 508.15'

TT–6
APN: 3941–027

R=21.00'
Δ=34°28'15"
L=12.63'

R=275.00'
Δ=31°17'50"
L=150.22'

R=405.00'
Δ=12°29'45"
L=88.33'

S30°52'47"E(R) 21.00'

N22°23'35"E(R) 405.00'

N64°50'39"E(R) 32.00'

N55°06'41"W 49.09'

R=32.00'
Δ=45°41'35"
L=25.52'

S03°35'28"W(R) 275.00'

N44°38'20"W(R) 32.00'

S85°27'09"W 46.84'

N49°32'51"W 15.56'

S85°27'09"W 15.50'

R=414.00'
Δ=18°37'56"
L=134.63'

R=32.00'
Δ=45°07'29"
L=25.20'

97.44'
N04°32'51"W

S85°38'01"W 3.83'

119.58'
N04°21'59"W

L16 L17 L18 L19

20th STREET (66' WIDE)

N85°38'01"E 800.00'

N85°38'01"E 212.00'

N85°38'01"E 495.57'

S64°37'17"E 48.37'

N85°38'01"E 208.50'

P.O.B. TT–5

N44°48'51"W 18.50'

PUEBLO LINE OF 1883

S04°21'59"E 203.50'

242.94'
N04°21'59"W

537.00'

TT–5

TT–4

PUEBLO LINE OF 1883

SEE SHEET 3

MEANDERS OF MHW LINE

LEGEND

TT–1	TRUST TERMINATION LANDS PER DOC–2018–K672970
PT–1	PUBLIC TRUST LANDS PER DOC–2018–K672971
P.O.B. PT–1	POINT OF BEGINNING OF LEGAL DESCRIPTION PER DOC–2018–K672971
P.O.B. TT–1	POINT OF BEGINNING OF LEGAL DESCRIPTION PER DOC–2018–K672970

AVG. CONVERGENCE ANGLE=0°02'30"

AVG. COMBINED FACTOR=1.00001193

GEODETIC NORTH

GRID NORTH

GRAPHIC SCALE

0 50 100 200

(IN FEET)
1 inch = 100 ft.

DETAIL B
NOT TO SCALE

ILLINOIS STREET

L12 L13 L14 L15 L16

N04°21'59"W 407.68'

20th STREET

P.O.B. TT–6

PARCEL	A.P.N.*	ACREAGE	DOC. NUMBER
PT–1	3941–020	29.58±	2018–K672971
PT–2	3941–021	10.85±	2018–K672971
TT–1	3941–022	4.15±	2018–K672970
TT–2	3941–023	2.64±	2018–K672970
TT–3	3941–024	4.35±	2018–K672970
TT–4	3941–025	12.87±	2018–K672970
TT–5	3941–026	2.52±	2018–K672970
TT–6	3941–027	3.42±	2018–K672970
TT–7	3941–028	1.54±	2018–K672970
TT–8	3941–029	0.17±	2018–K672970
R1	3941–030	7.66±	REMAINDER PARCEL
R2	3941–031	3.11±	REMAINDER PARCEL
R3	3941–032	2.65±	REMAINDER PARCEL

* APNs FOR INFORMATIONAL PURPOSES ONLY

EXISTING PARCELS

(PRIOR TO THE VACATION OF MICHIGAN STREET PER ORD. NO. 265–18)

FINAL TRANSFER MAP 9597

FOR PURPOSES OF FINANCING AND/OR CONVEYANCING ONLY

A MERGER AND 52 LOT SUBDIVISION OF PORTIONS OF THOSE CERTAIN PATENTS ENTITLED, "STATE OF CALIFORNIA, TRUST TERMINATION PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672970 AND "STATE OF CALIFORNIA, PUBLIC TRUST PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672971, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

ALSO BEING A PORTION OF THE LANDS AS SHOWN ON THAT RECORD OF SURVEY, RECORDED SEPTEMBER 17, 2018 IN BOOK HH OF SURVEY MAPS, PAGES 46 THROUGH 53.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

MARTIN M. RON ASSOCIATES, INC.
Land Surveyors
859 HARRISON STREET, SUITE 200
San Francisco, California 94107

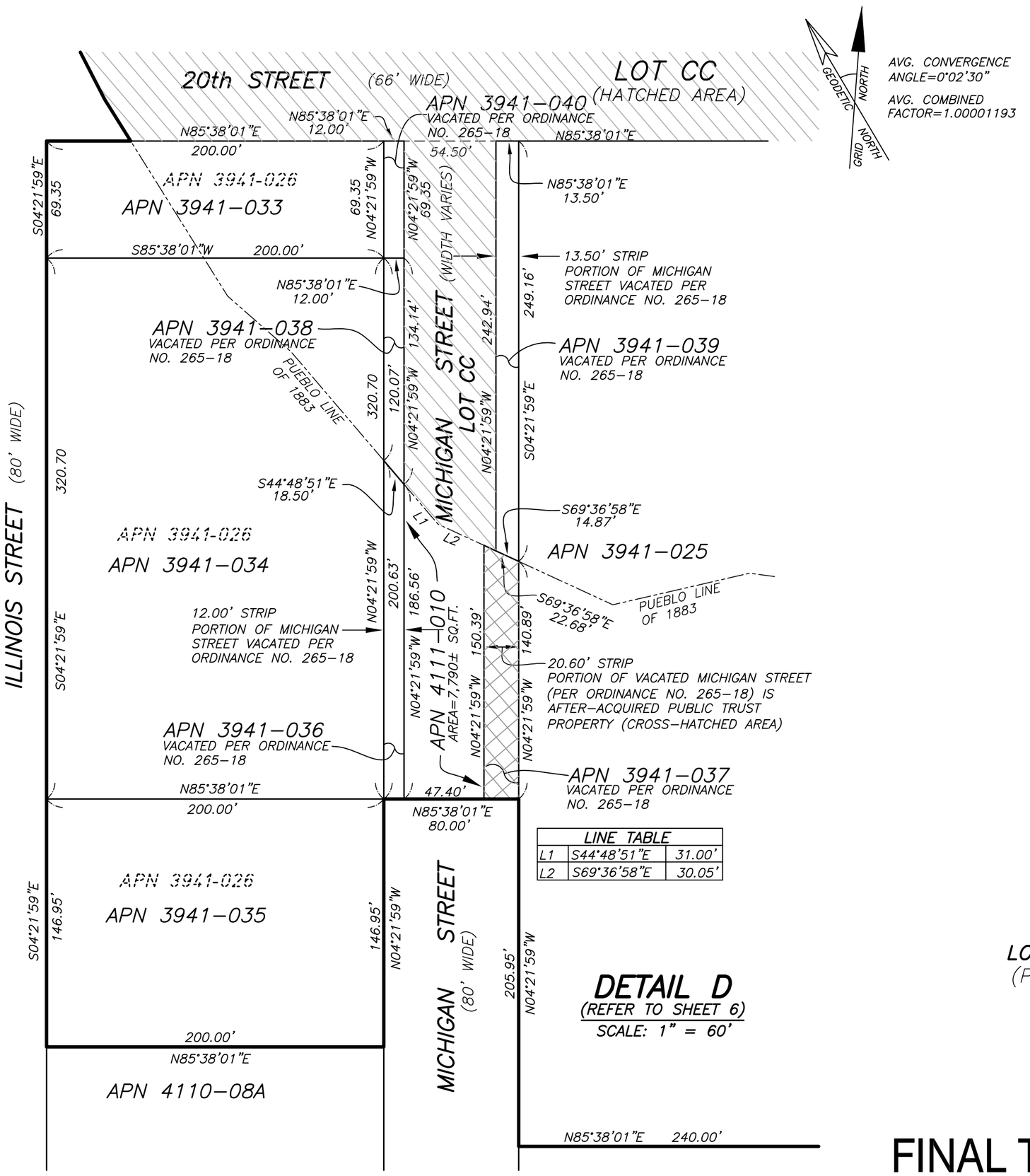
JANUARY 2019 SHEET 4 OF 10

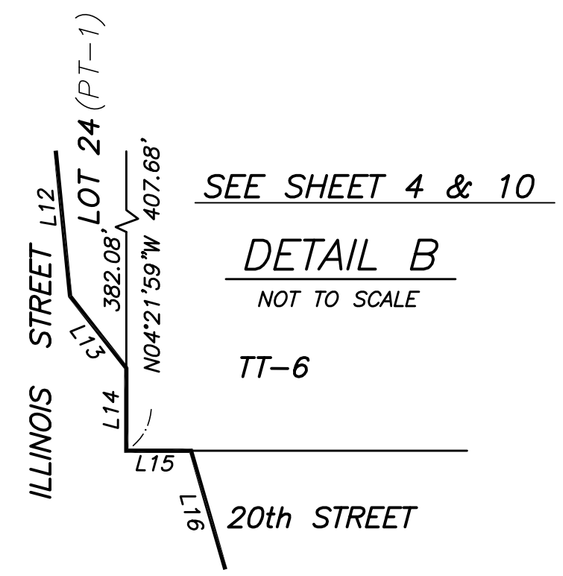
APNs: 3941–020, 022, 023, 024, 025, 026

MEANDER LINE OF MHW

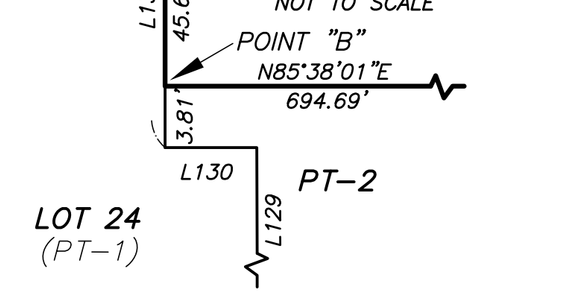
LINE TABLE		
LINE	BEARING	LENGTH
L50	N07°39'00"E	29.0
L51	N23°03'51"E	86.0
L52	N03°29'23"W	23.0
L53	N86°01'33"E	42.0
L54	N04°27'02"W	26.0
L55	S86°16'58"W	34.0
L56	S34°58'12"E	18.0
L57	N14°35'14"W	26.0
L58	N26°08'54"E	28.0
L59	N10°00'26"W	34.5
L60	N85°41'42"E	35.5
L61	N04°23'21"W	26.5
L62	S85°39'14"W	30.5
L63	N06°28'25"W	37.0
L64	N16°40'00"W	16.0
L65	N03°15'20"E	26.0
L66	S05°31'56"E	21.0
L67	N85°26'28"E	32.5
L68	N04°46'13"W	26.0
L69	S86°23'38"W	33.0
L70	N12°59'35"W	48.0
L71	N05°02'58"W	52.0
L72	N85°31'10"E	40.5
L73	N03°54'53"W	26.0
L74	S86°51'25"W	35.0
L75	N01°27'43"W	21.0
L76	N25°07'10"W	25.0
L77	N00°02'46"W	34.0
L78	N07°16'21"W	21.5
L79	N85°38'31"E	41.5
L80	N04°26'26"W	26.0
L81	S85°39'00"W	160.0
L82	N10°21'13"W	18.0
L83	N53°51'35"W	9.0
L84	N11°39'27"W	17.0
L85	N22°32'03"E	30.0
L86	N04°58'43"W	39.0
L87	N33°21'57"W	20.0
L88	N04°36'43"W	113.0
L89	N19°59'17"W	22.0
L90	N01°59'21"W	49.0
L91	N18°28'30"W	24.0
L92	N08°58'20"E	33.0
L93	N29°55'09"W	12.0
L94	N01°47'27"W	30.0
L95	N25°39'42"W	23.0
L96	N31°36'38"W	44.0
L97	N67°27'16"W	43.0
L98	N38°09'05"W	45.0
L99	N13°34'16"W	26.0

LINE TABLE		
LINE	BEARING	LENGTH
L100	N54°34'08"W	18.0
L101	N72°30'05"W	16.0
L102	N47°44'59"W	24.0
L103	N23°21'39"W	40.0
L104	N56°24'11"W	42.0
L105	N61°01'58"W	17.0
L106	N46°27'50"W	24.0
L107	N50°43'11"W	37.0
L108	N35°48'23"W	25.0
L109	N22°56'48"W	24.0
L110	N46°04'01"W	17.0
L111	N11°28'39"W	14.0
L112	N37°01'21"W	46.0
L113	N56°00'54"W	18.0
L114	N36°56'18"W	35.0
L115	N26°16'57"W	20.0
L116	N82°50'56"W	36.0
L117	S66°33'19"W	33.0
L118	N79°36'28"W	32.0
L119	S81°19'12"W	31.0
L120	N65°57'30"W	30.0
L121	N04°17'16"W	27.5
L122	S85°35'19"W	50.3
L123	S04°17'16"E	31.3
L124	S85°38'36"W	188.0
L125	S06°19'28"W	31.5
L126	N56°42'18"W	196.5
L127	S05°02'41"E	26.0
L128	S85°14'09"W	58.5
L129	N04°30'47"W	353.0
L130	S85°38'01"W	7.3
L131	S04°21'59"E	49.5
L132	N87°30'37"E	54.0
L133	N85°07'46"W	34.0
L134	S85°30'43"W	22.0
L135	N86°03'57"W	67.0
L136	N18°39'58"E	16.5
L137	N65°43'32"W	24.5
L138	S22°29'33"W	127.5
L139	N69°14'06"W	96.0
L140	N20°51'00"E	106.0
L141	N66°35'24"W	33.5
L142	S73°48'42"W	16.0
L143	S33°35'28"W	20.0
L144	N62°49'01"W	29.0
L145	N30°43'54"W	124.0
L146	N01°16'31"W	18.0
L147	N23°26'05"E	15.0
L148	N44°07'25"E	72.0
L149	N66°21'38"E	21.0
L150	N25°43'07"E	15.0
L151	N03°42'09"W	27.0





LINE TABLE		
L12	S08°36'58"E	106.26'
L13	S31°38'38"E	7.06'
L14	S04°21'59"E	25.60'
L15	N85°38'01"E	13.20'
L16	S31°38'38"E	46.64'
L17	S36°21'58"E	28.95'
L18	S85°38'01"W	49.91'



FINAL TRANSFER MAP 9597

FOR PURPOSES OF FINANCING AND/OR CONVEYANCING ONLY

A MERGER AND 52 LOT SUBDIVISION OF PORTIONS OF THOSE CERTAIN PATENTS ENTITLED, "STATE OF CALIFORNIA, TRUST TERMINATION PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018-K672970 AND "STATE OF CALIFORNIA, PUBLIC TRUST PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018-K672971, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

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CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

MARTIN M. RON ASSOCIATES, INC.
Land Surveyors
859 HARRISON STREET, SUITE 200
San Francisco, California 94107

JANUARY 2019

APNs: 3941-020, 022, 023, 024, 025, 026

GRAPHIC SCALE
0 50 60 120
(IN FEET)
1 inch = 60 ft.

AVG. CONVERGENCE ANGLE=0°02'30"
AVG. COMBINED FACTOR=1.00001193
GEODETIC NORTH
GRID NORTH

← SEE SHEET 10 →

N.A.P.
TT-6
APN: 3941-027

N85°38'01"E 13.20'
N31°38'38"W 46.64
N36°21'58"W 28.95
N85°38'01"E 49.91'
508.15'
N85°38'01"E 786.80'
N04°21'59"W
291.85'
LOT CC (HATCHED AREA)
LOT CC
20th STREET (PORT.)
(66' WIDE)
STREET ENCROACHMENT AGREEMENT 35' WIDE UNRESTRICTED ACCESS (C196, O.R. 780; 07/06/76)
N04°21'59"W 33.00
N04°21'59"W 66.00'
N04°21'59"W
N85°38'01"E
N64°37'18"W 48.37
N85°38'01"E 212.00'
54.50'
N85°38'01"E 750.09'
495.57'
N21°03'53"W 41.76
LOT A
69.35
69.35
N85°38'01"E 212.00'
LOT CC
13.50' STRIP PORTION OF MICHIGAN STREET VACATED PER ORDINANCE NO. 265-18
242.94'
390.05'
NOTE: SEE DETAIL "D", SHEET 5, FOR EXISTING PARCELS OF VACATED MICHIGAN STREET AND EXISTING ADJACENT PARCELS TO BE MERGED BY ACTION OF THIS SUBDIVISION.
PUEBLO LINE OF 1883
537.00'
LOT 23
218.09
LOT F
259.09
LOT 2
N04°21'59"W
N04°21'59"W
320.70
320.70
LOT 1
S69°36'58"E 7.82'
N21°16'29"E 27.73
S69°36'58"E 22.68'
PUEBLO LINE OF 1883
89.57
42.00
188.75
N85°38'01"E
320.32'
12.00' STRIP PORTION OF MICHIGAN STREET VACATED PER ORDINANCE NO. 265-18
MICHIGAN STREET (PORT)
150.39'
140.89'
20.60' STRIP PORTION OF VACATED MICHIGAN STREET (PER ORDINANCE NO. 265-18) IS AFTER-ACQUIRED PUBLIC TRUST PROPERTY (CROSS-HATCHED AREA)
LOT L
N04°21'59"W 98.46'
49.00
N85°38'01"E
340.07'
59.00
120.07'
N60°38'02"E 2.38
N85°38'01"E 80.67'
5.25'
R=80.00
Δ=25°00'00"
L=34.91
N04°21'59"W 106.96'
N85°38'01"E 212.00'
47.40'
377.14'
N85°38'01"E 356.54'
N85°38'01"E 80.00'
LOT H
LOT I
LOT 12
57.50
N04°21'59"W 152.50
49.00
49.00
49.00
N85°38'01"E 200.00
N85°38'01"E 392.50'
180.00
20.00
138.50
175.00
79.00
N26°49'04"W 13.09
LOT 10
236.76'
236.76'
N04°21'59"W
97.95
LOT 4
97.95
N04°21'59"W
97.95'
N04°21'59"W 146.95'
205.95'
128.00
LOT 5
N04°21'59"W 128.00
LOT 6
N04°21'59"W 128.00
LOT 7
115.90
LOT N
517.71'
180.00
20.00
5.00'
S85°38'01"W 200.00'(R2)
LOT J
S04°21'59"E
138.50
175.00
84.00
80.67'
N85°38'01"E
N85°38'01"E
256.17'
394.46'
N85°38'01"E 397.50'
25.00'
28.95'
LOT K
240.00'(R2)
N85°38'01"E
120.00
N85°38'01"E
4.00'
LOT M
N04°21'59"W
251.20
LOT 11
234.25'
138.25
LOT 8
138.25
N04°21'59"W
S04°21'59"E 329.00'(R2)
329.00'(R2)
N04°21'59"W
N04°21'59"W 270.00'(R2)
APN 4110-008A
DD MAPS 198
APN 4120-002
DD MAPS 198
ILLINOIS STREET (80' WIDE)
MICHIGAN STREET (80' WIDE) (CITY)

← SEE SHEET 8 & 9 →

← SEE SHEET 7 →

FINAL TRANSFER MAP 9597

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JANUARY 2019

APNs: 3941-020, 022, 023, 024, 025, 026

← SEE SHEET 10 →

LOT CC (HATCHED AREA)

N.A.P.
TT-7
APN: 3941-028

LOT B | LOT C | LOT CC | LOT F | LOT 2 | LOT 3 | LOT 21 | LOT E | LOT D | LOT L | LOT P | LOT Q | LOT 12 | LOT G | LOT 13 | LOT R | LOT 16 | LOT 10 | LOT N | LOT 15 | LOT S | LOT 11 | LOT 14 | LOT T | LOT 17 | LOT U

BUILDING 21 (SEE NOTE 3)
BUILDING 11 (SEE NOTE 2)
PUMP STATION SITE (SEE NOTE 4)
PUEBLO LINE OF 1883
MHW LINE
SAN FRANCISCO BAY

← SEE SHEET 6
← SEE SHEET 9

GRAPHIC SCALE
0 50 60 120
(IN FEET)
1 inch = 60 ft.

AVG. CONVERGENCE ANGLE=0°02'30"
AVG. COMBINED FACTOR=1.00001193

NOTES:
1. FOR DIMENSIONS ALONG THE MHW LINE, SEE LINE TABLE ON SHEET 5.

2. BUILDING 11 AND LOTS 13, 15, 16, P, Q AND R, ARE SUBJECT TO THAT CERTAIN DOCUMENT ENTITLED, "DECLARATION OF RESTRICTIONS AND LOT TIE AGREEMENT FOR BUILDING 11 LOTS, PIER 70 TRANSFER MAP NO. 9597", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019-K718818, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

3. BUILDING 21 AND LOTS 13, AND R, ARE SUBJECT TO THAT CERTAIN DOCUMENT ENTITLED, "DECLARATION OF RESTRICTIONS AND LOT TIE AGREEMENT FOR BUILDING 21 LOTS, PIER 70 TRANSFER MAP NO. 9597", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019-K718820, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

4. PUMP STATION SITE AND LOTS D AND E, ARE SUBJECT TO THAT CERTAIN DOCUMENT ENTITLED, "DECLARATION OF RESTRICTIONS AND LOT TIE AGREEMENT FOR PUMP STATION LOTS, PIER 70 TRANSFER MAP NO. 9597", RECORDED JANUARY 4, 2019, IN DOCUMENT NO. 2019-K718819, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

FINAL TRANSFER MAP 9597

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JANUARY 2019

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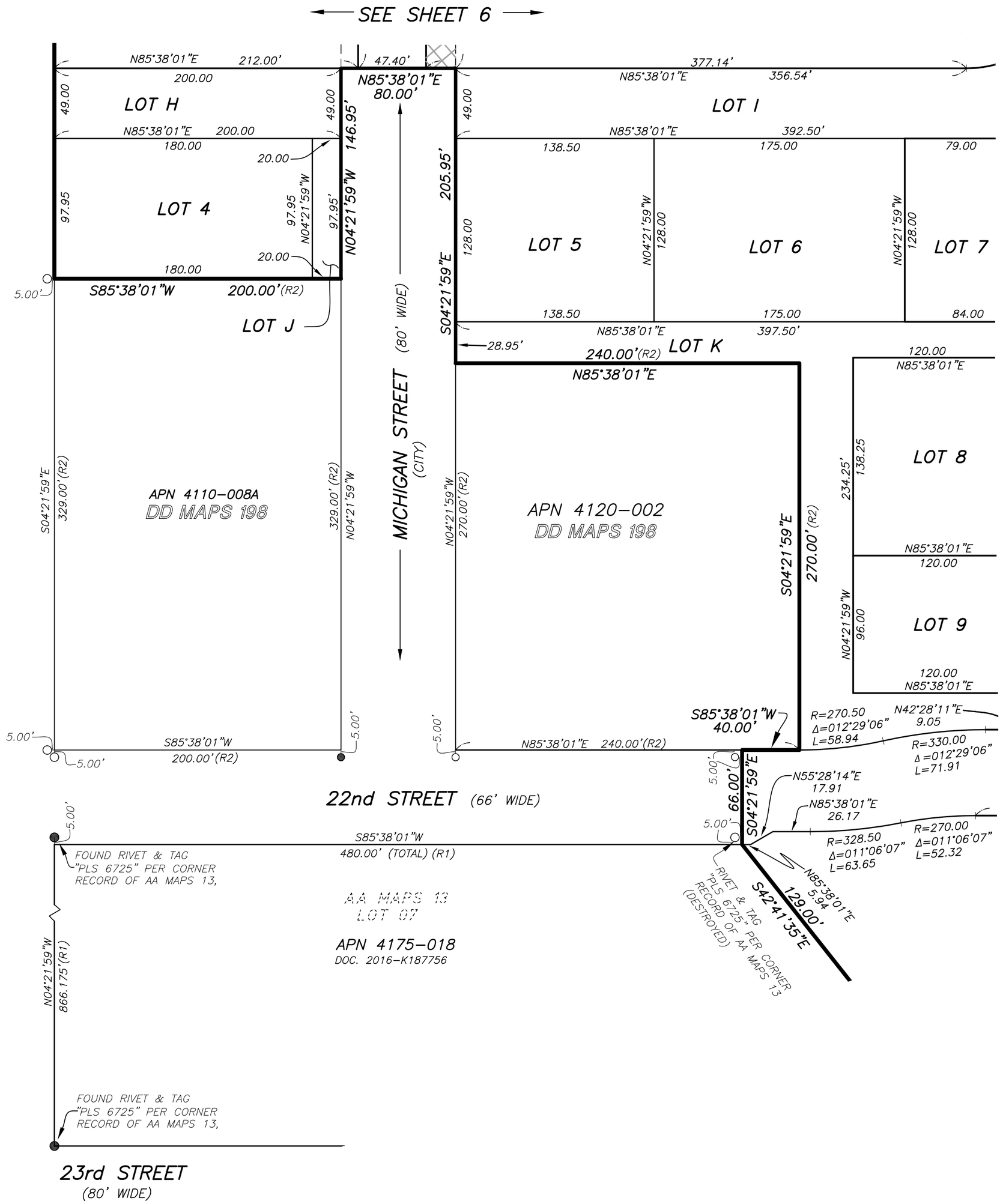
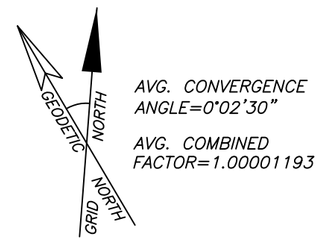


SEE SHEET 6 & 9

LOT	A.P.N.	ACREAGE	PROPOSED USE (NOT IN PUBLIC TRUST-EXCEPT[1])	LOT	A.P.N.	ACREAGE	PROPOSED USE	PUBLIC TRUST STATUS
1	4110-012	1.56	FUTURE DEVELOPMENT	A	4110-009	0.34	OPEN SPACE	NO
2	4111-009	1.24	FUTURE DEVELOPMENT	B	3941-042	0.37	FUTURE PUBLIC STREET	YES
3	4052-008	1.19	FUTURE DEVELOPMENT	C	4052-002	0.38	FUTURE PUBLIC STREET	YES
4	4110-013	0.40	FUTURE DEVELOPMENT	D	4052-003	1.03	OPEN SPACE	YES
5	4112-001	0.41	FUTURE DEVELOPMENT	E	4052-004	0.41	FUTURE PUBLIC STREET	YES
6	4112-002	0.51	FUTURE DEVELOPMENT	F	4111-005	0.19	PORT STREET	NO
7	4112-003	0.25	FUTURE DEVELOPMENT	G	4114-001	1.14	FUTURE PUBLIC STREET	YES
8	4113-002	0.38	FUTURE DEVELOPMENT	H	4110-010	0.22	FUTURE PUBLIC STREET	YES
9	4113-003	0.26	FUTURE DEVELOPMENT	I	4111-006	0.44	FUTURE PUBLIC STREET	NO
10	4114-005	0.44	FUTURE DEVELOPMENT	J	4110-011	0.04	OPEN SPACE	NO
11	4114-006	1.48	FUTURE DEVELOPMENT	K	4113-001	0.56	OPEN SPACE	NO
12	4114-007	0.56	FUTURE DEVELOPMENT	L	4111-007	0.38	FUTURE PUBLIC STREET	NO
13	4052-009	0.50	FUTURE DEVELOPMENT	M	4114-002	0.66	FUTURE PUBLIC STREET	NO
14	4116-008	1.17	FUTURE DEVELOPMENT	N	4114-003	0.59	OPEN SPACE	NO
15	4052-010	0.30	FUTURE DEVELOPMENT	O	4114-004	0.28	OPEN SPACE	NO
16	4052-011	0.77	FUTURE DEVELOPMENT	P	4052-005	0.25	FUTURE PUBLIC STREET	NO
17	4116-009	1.28	FUTURE DEVELOPMENT	Q	4052-006	0.19	FUTURE PUBLIC STREET	NO
18	4115-003	0.93	FUTURE DEVELOPMENT	R	4052-007	0.14	OPEN SPACE	NO
19	4117-002	1.00	FUTURE DEVELOPMENT	S	4116-001	2.27	OPEN SPACE	YES
20	4117-003	0.85	FUTURE DEVELOPMENT	T	4116-002	0.20	OPEN SPACE	NO
21	4052-012	1.01	FUTURE DEVELOPMENT	U	4116-003	0.78	OPEN SPACE	YES
22	4115-004	0.80	FUTURE DEVELOPMENT	V	4116-004	1.23	FUTURE PUBLIC STREET	YES
23[1]	4111-008	4.31	FUTURE DEVELOPMENT	W	4116-005	0.22	FUTURE PUBLIC STREET	YES
				X	4116-006	0.14	FUTURE PUBLIC STREET	YES
				Y	4115-001	0.16	OPEN SPACE	NO
				Z	4115-002	0.25	FUTURE PUBLIC STREET	NO
				AA	4117-001	0.16	OPEN SPACE	NO
				BB	4116-007	0.46	OPEN SPACE	YES
				CC[2]	3941-041	21.34	PORT RETAINED PARCEL	YES



NOTE:
APN's FOR INFORMATIONAL PURPOSES ONLY

1 *A PORTION OF LOT 23 LIES WITHIN THE PUBLIC TRUST, FOLLOWING THE PARTIAL VACATION OF MICHIGAN STREET AND SUBSEQUENT TRANSFER FROM THE CITY TO THE PORT (SEE SHEET 6).*

2 *LOT "CC" LIES WITHIN THE PUBLIC TRUST AND IS NOT A PART OF THE FUTURE SUBDIVISION KNOWN AS "WATERFRONT SITE AT PIER 70 SPECIAL USE DISTRICT".*

FINAL TRANSFER MAP 9597

FOR PURPOSES OF FINANCING AND/OR CONVEYANCING ONLY

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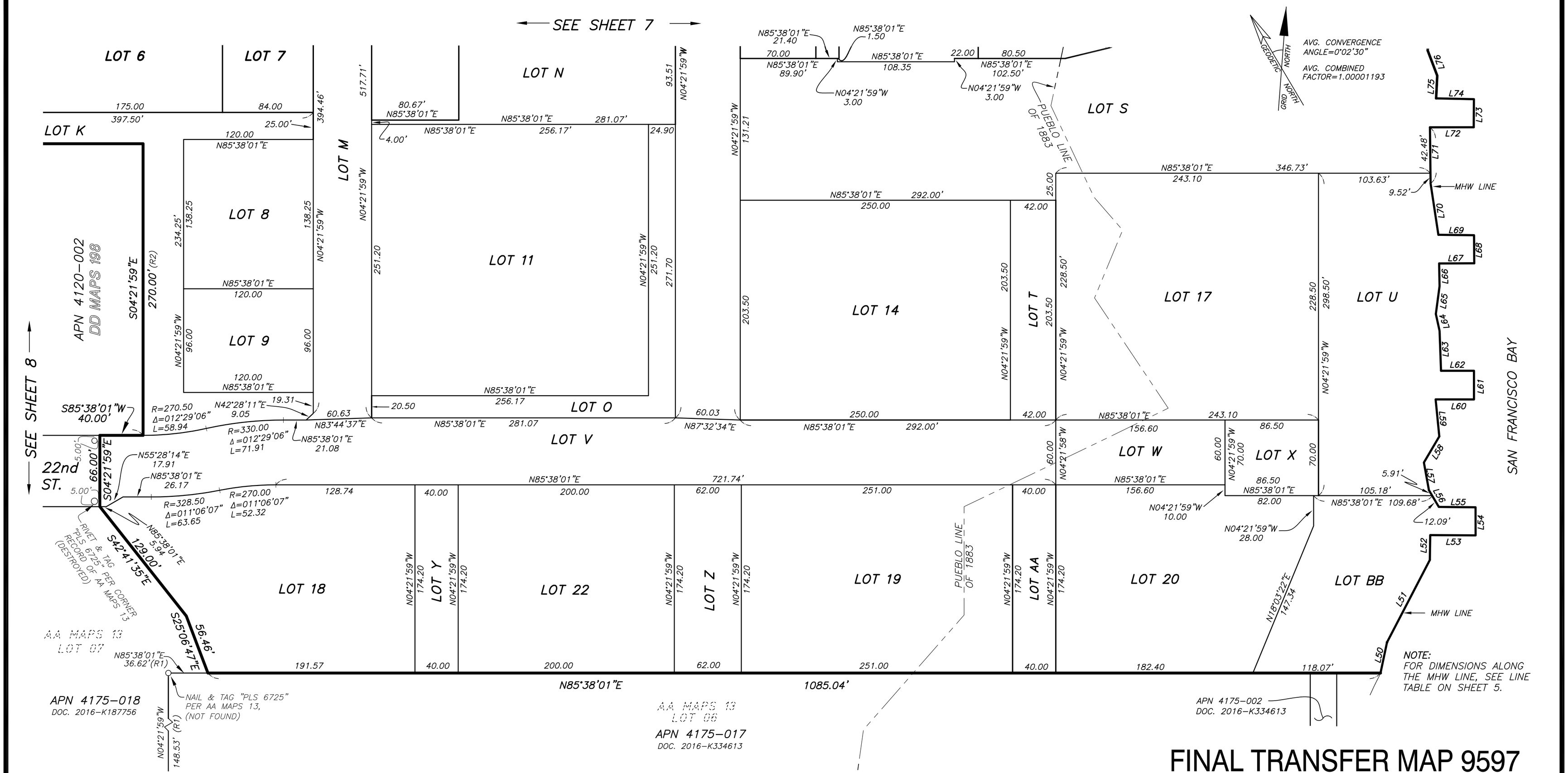
JANUARY 2019

APNs: 3941-020, 022, 023, 024, 025, 026



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CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

GRAPHIC SCALE

0 50 60 120

(IN FEET)

1 inch = 60 ft.

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JANUARY 2019

APNs: 3941-020, 022, 023, 024, 025, 026

HH S.M. 46
APN: 3941–029

S85°23'32"W 367.24'

N.A.P.
TT–8
APN: 3941–029

18th STREET

ILLINOIS STREET (80' WIDE)

SAN FRANCISCO BAY
CRANE COVE

S85°38'01"W
1411'±

HH S.M. 46
REMAINDER PARCEL R1
APN: 3941–030

S85°38'01"W 694.69'

SEE DETAIL C, SHEET 5

N.A.P.
PT–2
APN: 3941–021

S04°21'59"E 433.00'

583.00' N04°21'59"W

S85°38'01"W 330.00'

927.25' N04°21'59"W

SAN FRANCISCO BAY

N.A.P.
TT–6
APN: 3941–027

N.A.P.
TT–7
APN: 3941–028

LOT CC
(HATCHED AREA)

SEE DETAIL B, SHEET 5

20th STREET (66' WIDE)
(PORT)

LOT A

LOT 23

LOT B

LOT C

APPROX. EDGE OF SEAWALL (MHW LINE)

EDGE OF CONC. DECK & SEAWALL (MHW LINE)

EDGE OF METAL STRIP/CONC. DECK (MHW LINE)

EDGE OF CONC. DECK (MHW LINE)

MHW LINE

DESIGN MHW LINE

28.87'

R=21.00' Δ=34°28'15" L=12.63'

R=275.00' Δ=31°17'50" L=150.22'

R=405.00' Δ=12°29'45" L=88.33'

R=414.00' Δ=18°37'56" L=134.63'

R=32.00' Δ=45°41'35" L=25.52'

R=32.00' Δ=45°07'29" L=25.20'

S30°52'47"E(R) 21.00'

S03°35'28"W(R) 275.00'

N22°23'33"E(R) 405.00'

N64°50'39"E(R) 32.00'

N44°36'20"W(R) 32.00'

N55°06'41"W 49.09'

S85°27'09"W 46.84'

N49°32'51"W 15.56'

S85°27'09"W 15.50'

S85°38'01"W 3.83'

S04°21'59"E 33.00'

S85°38'01"W 68.93'

N36°29'34"W 355.42'

S36°29'34"E 45.07'

17.09'

79.47' N85°38'01"E

98.51' N53°30'26"E

N85°38'01"E 508.15'

N85°38'01"E 786.80'

291.85'

N85°38'01"E 280.55'

N85°38'01"E 258.78'

382.08'

407.68'

S04°12'26"E 301.00'

97.44' N04°32'51"W

119.58' N04°21'59"W

991.22' N04°21'59"W

695.80' N04°21'59"W

491.32' N04°21'59"W

87.48'

117.00'

L10 L11 L12 L16 L17 L18

L95 L96 L97 L98 L99 L100 L101 L102 L103 L104 L105 L106 L107 L108 L109 L110 L111 L112 L113 L114 L115 L116 L117 L118 L119 L120 L121 L122 L123 L124 L125 L126 L127 L128 L129 L130 L131 L132 L133 L134 L135 L136 L137 L138 L139 L140 L141 L142 L143 L144 L145 L146 L147 L148 L149 L150 L151

L24 L25 L26 L27 L28 L29

SEE SHEETS 6 & 7

LINE TABLE		
L10	S59°51'58"E	28.38'
L11	S33°51'58"E	92.40'
L12	S08°36'58"E	106.26'
L13	S31°38'38"E	7.06'
L14	S04°21'59"E	25.60'
L15	N85°38'01"E	13.20'
L16	S31°38'38"E	46.64'
L17	S36°21'58"E	28.95'
L18	S85°38'01"W	49.91'

GRAPHIC SCALE
0 50 100 200
(IN FEET)
1 inch = 100 ft.

GEODETIC NORTH
GRID NORTH
AVG. CONVERGENCE ANGLE=0°02'30"
AVG. COMBINED FACTOR=1.00001193

MEANDER LINE OF MHW

LINE TABLE		
LINE	BEARING	LENGTH
L97	N67°27'16"W	43.0
L98	N38°09'05"W	45.0
L99	N13°34'16"W	26.0
L100	N54°34'08"W	18.0
L101	N72°30'05"W	16.0
L102	N47°44'59"W	24.0
L103	N23°21'39"W	40.0
L104	N56°24'11"W	42.0
L105	N61°01'58"W	17.0
L106	N46°27'50"W	24.0
L107	N50°43'11"W	37.0
L108	N35°48'23"W	25.0
L109	N22°56'48"W	24.0
L110	N46°04'01"W	17.0
L111	N11°28'39"W	14.0
L112	N37°01'21"W	46.0
L113	N56°00'54"W	18.0
L114	N36°56'18"W	35.0
L115	N26°16'57"W	20.0
L116	N82°50'56"W	36.0
L117	S66°33'19"W	33.0
L118	N79°36'28"W	32.0
L119	S81°19'12"W	31.0
L120	N65°57'30"W	30.0
L121	N04°17'16"W	27.5
L122	S85°35'19"W	50.3
L123	S04°17'16"E	31.3
L124	S85°38'36"W	188.0
L125	S06°19'28"W	31.5
L126	N56°42'18"W	196.5
L127	S05°02'41"E	26.0
L128	S85°14'09"W	58.5
L129	N04°30'47"W	353.0
L130	S85°38'01"W	7.3
L131	S04°21'59"E	49.5
L132	N87°30'37"E	54.0
L133	N85°07'46"W	34.0
L134	S85°30'43"W	22.0
L135	N86°03'57"W	67.0
L136	N18°39'58"E	16.5
L137	N65°43'32"W	24.5
L138	S22°29'33"W	127.5
L139	N69°14'06"W	96.0
L140	N20°51'00"E	106.0
L141	N66°35'24"W	33.5
L142	S73°48'42"W	16.0
L143	S33°35'28"W	20.0
L144	N62°49'01"W	29.0
L145	N30°43'54"W	124.0
L146	N01°16'31"W	18.0
L147	N23°26'05"E	15.0
L148	N44°07'25"E	72.0
L149	N66°21'38"E	21.0
L150	N25°43'07"E	15.0
L151	N03°42'09"W	27.0

FINAL TRANSFER MAP 9597

FOR PURPOSES OF FINANCING AND/OR CONVEYANCING ONLY

A MERGER AND 52 LOT SUBDIVISION OF PORTIONS OF THOSE CERTAIN PATENTS ENTITLED, "STATE OF CALIFORNIA, TRUST TERMINATION PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672970 AND "STATE OF CALIFORNIA, PUBLIC TRUST PATENT", RECORDED SEPTEMBER 14, 2018, IN DOCUMENT NO. 2018–K672971, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

ALSO BEING A PORTION OF THE LANDS AS SHOWN ON THAT RECORD OF SURVEY, RECORDED SEPTEMBER 17, 2018 IN BOOK HH OF SURVEY MAPS, PAGES 46 THROUGH 53.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

MARTIN M. RON ASSOCIATES, INC.
Land Surveyors
859 HARRISON STREET, SUITE 200
San Francisco, California 94107

JANUARY 2019

APNs: 3941–020, 022, 023, 024, 025, 026

EXHIBIT T

FORM OF OWNER'S AFFIDAVIT

ALTA EXTENDED COVERAGE OWNER'S AFFIDAVIT

Master Escrow No. _____
Title No. _____

ON THE _____ DAY OF _____, 2019, before me personally appeared the undersigned, who being duly sworn according to law and intending to be legally bound, deposes and says:

1. The undersigned has reviewed Report/Commitment No. _____ dated _____ at _____.

2. That there are no leases or agreements (recorded or unrecorded) affecting the Property, or other parties in possession, except as shown on the attached Exhibit A. As to those items set forth on Exhibit A, there are no options to purchase or rights of first refusal contained in the respective leases and/or agreements other then specifically indicated on Exhibit A.

   (Exhibit A attached _____ Yes _____No)

3. That the affiant knows of no unrecorded claims against the property, nor any set of facts by reason of which title to the property might be disputed or questioned, and has been in peaceable and undisputed possession of the premises since title was acquired.

4. That there has not been any construction, repairs, alterations or improvements made, ordered or contracted to be made on or to the premises, nor materials ordered therefor within the last six months; nor are there any fixtures attached to the premises which have not been paid for in full; except as shown on attached Exhibit B.

   (Exhibit B attached _____ Yes _____ No)

5. That to my actual knowledge there has been no violation of any covenants, conditions or restrictions of record affecting the premises and that there are no disputes with any adjoining property owners as to the location of property lines, or the encroachment of any improvements.

This affidavit is made for the purpose of aiding _____ in determining the insurability of title to the property, and to induce said Company to issue its policies of title insurance and the affiant avers the foregoing statements are true and correct to the best of her knowledge and belief.

I understand that the Purchaser, Title Insurance Company and/or Lender in this transaction are relying on the representations contained herein in purchasing same, insuring same, or lending money thereon and would not purchase same, insure same, or lend money thereon unless said representations were made.

EXECUTED this _____ day of _____, 2019

The City and County of San Francisco, a municipal corporation,
operating by and through the San Francisco Port Commission

By: _____
Name: Michael Martin, Deputy Director of Real Estate and Development

Address: Pier 1
San Francisco, CA 94111

Phone: (415) 274-0400

CERTIFICATE OF ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)
appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

EXHIBIT S

Chicago Title Company

ISSUING OFFICE: 2150 John Glenn Dr, Suite 400, Concord, CA 94520

January 11, 2019

=addressee=

Order No.: 15605806-156-TM1-JM

Property Address: Pier 70, Parcel K North, San Francisco, CA
Seller: City and County of San Francisco
Buyer:

We appreciate the opportunity of being of service to you. Please call us immediately if you have any questions or concerns.

Sincerely,

Chicago Title Company

Escrow Contact:
Tyson Miklebost
(415) 291-5109
Tyson.Miklebost@ctt.com

Title Contact:
Jeff Martin
(925) 288-8062
jeff.martin@titlegroup.fntg.com

PRO FORMA
OWNER'S POLICY OF TITLE INSURANCE

Issued by

Chicago Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, CHICAGO TITLE INSURANCE COMPANY, a Florida corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from

   (a) A defect in the Title caused by

      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

      (ii) failure of any person or Entity to have authorized a transfer or conveyance;

      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;

      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

      (vii) a defective judicial or administrative proceeding.

   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

3. Unmarketable Title.

4. No right of access to and from the Land.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

   (a) the occupancy, use, or enjoyment of the Land;

   (b) the character, dimensions, or location of any improvement erected on the Land;

   (c) the subdivision of land; or

   (d) environmental protection

   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

9. Title being vested other than as stated Schedule A or being defective

   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

   (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

      (i) to be timely, or

      (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Chicago Title Insurance Company
Countersigned by:

Pro Forma Specimen
Authorized Signature

This is a Pro Forma Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.

(b) "Date of Policy": The date designated as 'Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be

subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Chicago Title Insurance Company, Attn: Claims Department, Post Office Box 45023, Jacksonville, Florida 32232-5023.

Chicago Title Insurance Company

SCHEDULE A

This is a Pro Forma Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

Name and Address of Title Insurance Company: **Chicago Title Company, 455 Market Street, Suite 2100, San Francisco, CA 94105**

Policy No.: **Pro Forma-CA-FWPN-IMP-72306-1-19-15605806** Order No.: **15605806-156-TM1-JM**

Address Reference: **Pier 70, Parcel K North, San Francisco, CA**

Amount of Insurance: **PRO FORMA** Premium: **PRO FORMA**

Date of Policy: **PRO FORMA**

1. Name of Insured:

   TBD

2. The estate or interest in the Land that is insured by this policy is:

   A FEE

3. Title is vested in:

   TBD

4. The Land referred to in this policy is described as follows:

   See Exhibit A attached hereto and made a part hereof.

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE), DISTANT THEREON SOUTH 04° 21' 59" EAST 69.35 FEET FROM THE INTERSECTION OF THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE) AND SAID EASTERLY LINE OF ILLINOIS STREET; THENCE ALONG SAID LINE OF ILLINOIS STREET, SOUTH 04° 21' 59" EAST 320.70 FEET; THENCE NORTH 85° 38' 01" EAST 212.00 FEET TO THE WESTERLY LINE OF MICHIGAN STREET (VARYING WIDTH); THENCE ALONG SAID LINE OF MICHIGAN STREET NORTH 04° 21' 59" WEST 320.70 FEET; THENCE SOUTH 85° 38' 01" WEST 212.00 FEET TO SAID POINT OF BEGINNING.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS BASED UPON THE BEARING OF NORTH 03° 41' 33" WEST BETWEEN SURVEY CONTROL POINTS NUMBERED 375 AND 376, OF THE HIGH PRECISION NETWORK DENSIFICATION (HPND), CITY & COUNTY OF SAN FRANCISCO 2013 COORDINATE SYSTEM (SFCS13).

ALSO SHOWN AS LOT 1 ON FINAL TRANSFER MAP 9597, WHICH MAP WAS FILED FOR RECORD _____, BOOK OF MAPS, PAGES _____, INCLUSIVE.

APN: Block 3941, Lots 034, 036 and 038 (current)
Block 4110, Lot 012 (new)

SCHEDULE B

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Intentionally deleted

2. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2019-2020.

3. Intentionally deleted

4. The Land lies within the boundaries of a Mello Roos Community Facilities District ("CFD"), as follows:

   CFD No: 90-1
   For: School Facility Repair and Maintenance

   This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

5. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring on or after the Date of Policy.

   None now due and payable as of the date of the policy.

6. Intentionally deleted

7. Intentionally deleted

8. Intentionally deleted

9. Matters contained in that certain document

   Entitled: Covenant and Environmental Restriction on Property
   Dated: August 11, 2016
   Executed by: City and County of San Francisco, acting by and through the Port of San Francisco
   Recording Date: August 19, 2016
   Recording No: 2016-K308328-00, Official Records

   Reference is hereby made to said document for full particulars.

10. Matters contained in that certain document

SCHEDULE B
(Continued)

Entitled:	Compromise Title Settlement and Land Exchange Agreement for Pier 70 ("Agreement") by and between the State of California, acting by and through the State Lands Commission ("Commission") and the City and County of San Francisco, acting by and through the San Francisco Port Commission ("Port") pursuant to Chapter 477 of the Statues of 2011 (AB418)
Executed by and between:	The State of California, acting by and through the State Lands Commission ("Commission") and the City and County of San Francisco, acting by and through the San Francisco Port Commission ("Port") pursuant to Chapter 477 of the Statutes of 2011 (AB418)
Recording Date:	September 14, 2018
Recording No:	2018-K672968-00, Official Records

Reference is hereby made to said document for full particulars.

11. Intentionally deleted

12. Intentionally deleted

13. An Action in the Superior Court

Dated:	September 13, 2018
Entitled:	City and County of San Francisco, a Charter City v. All Persons
Case No.:	CGC-18-569714
Nature of Action:	Quiet Title "McEnerney Act," so called

Notice of Pendency of said Action

Recorded:	September 13, 2018
Recording No.:	2018-K672682, Official Records

Affects: Lands described therein

14. Matters as shown on that certain map/plat entitled, Final Transfer Map 9597

Recording Date: _____
Recording No.: _____ of _____ Maps, Pages _____-_____, inclusive

Reference is hereby made to said document for full particulars.

15. Intentionally deleted.

16. Intentionally deleted

17. Intentionally deleted

SCHEDULE B
(Continued)

18. Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by survey,

    Job No.: S-9683
    Dated: , 2019
    Prepared by: Martin M. Ron Associates
    Matters shown:

    (SUBJECT TO REVIEW OF SITE PLAN OVERLAY)

19. Intentionally deleted

20. Intentionally deleted

21. Matters contained in that certain document

    Entitled: Quitclaim Deed
    Dated: , 2019
    Executed by: TBD
    Recorded: , 2019, as Instrument No. 2019- , Official Records

    Reference is hereby made to said document for full particulars.

22. Matters contained in that certain document

    Entitled: Notice of Payment of Transfer Fee Required
    Dated: , 2019
    Executed by: TBD
    Recorded: , 2019, as Instrument No. 2019- , Official Records

    Reference is hereby made to said document for full particulars.

23. Matters contained in that certain document

    Entitled: Declaration Imposing Transfer Fee Covenant and Lien
    Dated: , 2019
    Executed by: TBD
    Recorded: , 2019, as Instrument No. 2019- , Official Records

    Reference is hereby made to said document for full particulars.

24. Matters contained in that certain document

    Entitled: Declaration of Restrictions, Covenants, Maritime and Industrial Uses and Release

    Dated:: , 2019
    Executed by: TBD
    Recorded: , 2019, as Instrument No. 2019- , Official Records

    Reference is hereby made to said document for full particulars.

SCHEDULE B
(Continued)

25. Matters contained in that certain document

Entitled: Restrictive Covenant Related to Condo Owners
Dated:: , 2019
Executed by: TBD
Recorded: , 2019, as Instrument No. 2019- , Official Records

Reference is hereby made to said document for full particulars.

26. Matters contained in that certain document

Entitled: Memorandum of Vertical Disposition and Development Agreement
Dated: , 2019
Executed by: TBD
Recorded: , 2019, as Instrument No. 2019- , Official Records

Reference is hereby made to said document for full particulars.

27. Matters contained in that certain document

Entitled: Agreement to Comply with CFD Matters
Dated: , 2019
Executed by: TBD
Recorded: , 2019, as Instrument No. 2019- , Official Records

Reference is hereby made to said document for full particulars.

END OF SCHEDULE B

This is a pro forma policy furnished to or on behalf of the party to be insured. It neither reflects the present status of title, nor is it intended to be a commitment to insured. The inclusion of endorsements as a part of the pro forma policy in no way evidences the willingness of the company to provide any affirmative coverage shown therein. There are requirements which must be met before a final policy can be issued in the same form as the pro forma policy. A commitment to insure setting forth these requirements should be obtained from the Company.

Additional Matters may be added or other amendments may be made to this pro forma policy by reason of any defects, liens or encumbrances that appear for the first time in the Public Records or come to the attention of the Company and are created or attached between the issuance of this pro forma policy and the issuance of a policy of title insurance. The Company shall have no liability because of such addition or amendment.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued By
Chicago Title Insurance Company

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

   a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

   b. "Future Improvement" means a building, structure, road, walkway, driveway, curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.

   c. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.

   d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by TBD dated TBD, last revised TBD, designated as TBD consisting of TBD sheets.

3. The Company insures against loss or damage sustained by the Insured by reason of:

   a. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;

   b. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or

   c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

   a. any Covenant contained in an instrument creating a lease;

   b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

   c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued By
Chicago Title Insurance Company

1. The insurance provided by this endorsement is subject to the exceptions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

   (a) "Improvement" means a building, structure, or paved area, including any road, walkway, parking area, driveway, or curb located on the surface of the Land or the surface of adjoining land at Date of Policy that by law constitutes real property.

   (b) "Future Improvement" means any of the following to be constructed on the Land after Date of Policy in the locations according to the Plans and that by law constitutes real property:

      (i) a building;
      (ii) a structure; or
      (iii) a paved area, including any road, walkway, parking area, driveway, or curb.

   (c) "Plans" mean the survey, site and elevation plans, or other depictions or drawings prepared by TBD dated TBD, last revised TBD, designated as TBD consisting of TBD sheets.

3. The Company insures against loss or damage sustained by the Insured by reason of:

   (a) An encroachment of any Improvement or Future Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an Exception in Schedule B of the policy identifies the encroachment;

   (b) An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an Exception in Schedule B of the policy identifies the encroachment;

   (c) Enforced removal of any Improvement or Future Improvement located on the Land as a result of an encroachment by the Improvement or Future Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement or Future Improvement; or

   (d) Enforced removal of any Improvement or Future Improvement located on the Land that encroaches onto adjoining land.

4. Sections 3(c) and 3(d) of this endorsement do not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the following Exceptions, if any, listed in Schedule B:

   "None"

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued By
Chicago Title Insurance Company

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued by
Chicago Title Insurance Company

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from Illinois Street (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued by
Chicago Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued By
Chicago Title Insurance Company

1. For purposes of this endorsement:

   a. "Improvement" means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.

   b. "Plans" means those site and elevation plans made by TBD dated TBD, last revised TBD, designated as TBD consisting of TBD sheets.

2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy

   a. According to applicable zoning ordinances and amendments, the Land is not classified Zone TBD;

   b. The following use or uses are not allowed under that classification:

      TBD

   c. There shall be no liability under paragraph 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.c. does not modify or limit the coverage provided in Covered Risk 5.

3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any Improvement, as specified in paragraph 2.b. or requiring the removal or alteration of the Improvement, because of a violation of the zoning ordinances and amendments in effect at Date of Policy with respect to any of the following matters:

   a. Area, width, or depth of the Land as a building site for the Improvement

   b. Floor space area of the Improvement

   c. Setback of the Improvement from the property lines of the Land

   d. Height of the Improvement, or

   e. Number of parking spaces.

4. There shall be no liability under this endorsement based on:

   a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;

   b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company
Countersigned by:

Pro Forma Specimen
Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued by
Chicago Title Insurance Company

The policy is hereby amended by deleting Paragraph 14 of the Conditions, relating to Arbitration.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued By
Chicago Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of any final determination by the San Francisco County Assessor that the Land is not entitled to be assessed under a separate tax parcel number that includes all of the Land and no other land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provisions of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued by
Chicago Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued by
Chicago Title Insurance Company

The Company insures against loss or damage sustained by reason of any existing violations on the Land of the covenants, conditions and restrictions referred to in paragraph 9 of Schedule B.

As used in this endorsement, the words "covenants, conditions or restrictions" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions or substances except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued by
Chicago Title Insurance Company

The Policy will be amended by deleting Exception 13, of Schedule B, upon:

a. Recordation of a non appealable final court order or judgment in an action, in form and content approved by Company, under the Destroyed Land Records Relief Law (Code Civ. Proc., 751.01 et seq.) commonly known as the "McEnerney Act", with respect to the parcels of land described in Schedule A sufficient to establish, quiet and confirm the record title and ownership thereof (McEnerney Action) ;

b. The rights and interests, upon the terms, covenants and conditions thereof, for the purposes stated therein and incidental purposes as created and confirmed in said McEnerney Action, if any, will be added as Exceptions to the Policy by endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

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PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued by
Chicago Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services: (CHECK ALL THAT APPLY)

✓ Water service	✓ Natural gas service	✓ Telephone service
✓ Electrical power service	✓ Sanitary sewer	✓ Storm water drainage

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

(1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;

(2) a gap between the boundaries of the rights-of-way or easements ; or

(3) a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

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PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued by
Chicago Title Insurance Company

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by Martin M. Ron Associates dated , 2019, and designated Job No. S-9683.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

PRO FORMA ENDORSEMENT
Attached to Policy No. Pro Forma-CA-FWPN-IMP-72306-1-19-15605806
Issued By
Chicago Title Insurance Company

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For the purposes of this endorsement only:

   a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument recorded in the Public Records at Date of Policy.

   b. "Private Right" means (i) an option to purchase; (ii) a right of first refusal; or (iii) a right of prior approval of a future purchaser or occupant.

3. The Company insures against loss or damage sustained by the Insured under this Owner's Policy if enforcement of a Private Right in a Covenant affecting the Title at Date of Policy based on a transfer of Title on or before Date of Policy causes a loss of the Insured's Title.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

   a. any Covenant contained in an instrument creating a lease;

   b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;

   c. any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances; or

   d. any Private Right in an instrument identified in Exception(s) "None" in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **PRO FORMA**

Chicago Title Insurance Company

Countersigned by:

Pro Forma Specimen

Authorized Signature

This is a Pro Forma Endorsement. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

[_____]
[_____]
[_____]
Attn: [_____]

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Vertical Disposition and Development Agreement)

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**"), effective as of [_____], (the "**Effective Date**"), is entered into by and between [_____], a [_____] ("**Vertical Developer**" or "**Transferor**"), and [_____], a [_____] ("**Transferee**").

RECITALS:

A. The City and County of San Francisco, a municipal corporation (the "**City**"), operating by and through the San Francisco Port Commission ("**Port**") and Vertical Developer are parties to that certain Vertical Disposition and Development Agreement dated as of [_____], 20[__], for certain property located in the City and County of San Francisco, California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "**Property**"), [**Note: add if applicable any intervening amendment and/or assignments**] (as [amended] [and] [assigned], the "**Vertical DDA**"). Terms used herein but not defined herein shall have the meanings ascribed to such terms in the Vertical DDA.

B. Vertical Developer and Transferee have entered into an agreement (the "**Purchase Agreement**") pursuant to which Vertical Developer has agreed to assign all of its right, title and interest in and to the Vertical DDA Financing Plan and such other related transaction documents listed in ***Exhibit A*** (collectively, "**Transaction Documents**") to Transferee, and Transferee has agreed to assume all of Vertical Developer's right title and interest in and to the Transaction Documents from Vertical Developer.

C. In order to consummate the transactions contemplated by the Purchase Agreement, Vertical Developer desires to assign and Transferee desires to assume the Transaction Documents on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Vertical Developer and Transferee agree as follows:

1. Assignment By Vertical Developer. Vertical Developer hereby assigns to Transferee as of the Effective Date each and all of the right, title, interest and obligations of Vertical Developer under the Transaction Documents and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to the Transaction Documents.

2. Assumption By Transferee. Transferee hereby assumes from Vertical Developer as of the Effective Date each and all of the right, title, interest and obligations of Vertical Developer under the Transaction Documents and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to the Transaction Documents. Transferee hereby acknowledges that Transferee has reviewed the Transaction Documents and agrees to be bound by the Transaction Documents and all conditions and restrictions to which Vertical Developer is subject under the Transaction Documents.

3. Representations and Warranties of Vertical Developer. Vertical Developer hereby makes the following representations and warranties to Transferee and Port as of the Effective Date:

3.1 Status. Vertical Developer is a duly organized limited liability company, validly existing and in good standing under the laws of the State of [_____] and is duly qualified and in good standing under the laws of authorized to do business in the State of California.

3.2 Authority; No Conflicts. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Vertical Developer. The person signing this Agreement on behalf of Vertical Developer has full power and authority to sign this Agreement on Vertical Developer's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject.

4. Representations and Warranties of Transferee. Transferee hereby makes the following representations and warranties to Vertical Developer and Port:

4.1 Status. Transferee is a duly organized [corporation/limited liability company/limited partnership], validly existing and in good standing under the laws of the State of [_____] and is duly qualified and in good standing under the laws of authorized to do business in the State of California.

4.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Transferee. The person signing this Agreement on behalf of Transferee has full power and authority to sign this Agreement on Transferee's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Transferee is a party or to which Transferee is subject

4.3 Investigation of Property; No Port or City Representations. Transferee has conducted a thorough investigation and due diligence of the Property. Port has not made any representations or warranties with respect to the condition of the Property.

5. Release of City Parties and the State Lands Indemnified Parties. Transferee, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges City Parties and the State Lands Indemnified Parties under the Vertical DDA of all Losses against the City Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the City Parties arising prior to the Effective Date.

Transferee understands and expressly accepts and assumes the risk that any facts concerning the Losses released, waived, and discharged in this Agreement includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the claims released, waived, and discharged in this Agreement, Transferee expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, TRANSFEREE SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

TRANSFEREE INITIALS: _____

6. General Provisions.

6.1 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

6.2 Notices. The provisions of Section 25.1 of the Vertical DDA are incorporated by reference with the same effect as if set forth herein; provided, however, the address for Transferee is as follows:

[_____]
[_____]
[_____]
Attn: [_____]

EXHIBIT R

With a copy to:

[_____]
[_____]
[_____]
Attn: [_____]

6.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors, and assigns.

6.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument.

6.5 Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

6.6 Amendment to Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

6.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

6.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

6.9 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

6.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

6.11 Partial Invalidity. If any portion of this Agreement as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

6.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Agreement; (b) it has executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel.

6.13 Defined Terms. All capitalized terms not defined herein are set forth in the Vertical DDA.

EXHIBIT R

[the remainder of this page has been intentionally left blank]

EXHIBIT R

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

VERTICAL DEVELOPER:

By: _____
Name:
Title:

TRANSFEREE:

By: _____
Name:
Title:

Release

Port hereby releases and discharges [insert Vertical Developer ("**Transferor**")] from all obligations that are transferred to, and assumed by, [insert transferee ("**Transferee**")] under the foregoing Assignment and Assumption Agreement between Transferor and Transferee, dated as of [_____, 20XX] (the "**Assignment and Assumption Agreement**"), to which this Release is attached. All capitalized terms not defined in this Release are as defined in the Assignment and Assumption Agreement/

Port acknowledges that this release is made with the advice of counsel regarding its consequences and effects. Port agrees this release covers unknown claims and waives the benefit of California Civil Code Section 1542 (or such successor statutes), which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."
>
> PORT INITIALS: _____

ACKNOWLEDGED & AGREED TO BY:

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

By: _____
Name: _____
Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)
Signature of Notary Public

EXHIBIT R

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[INSERT LEGAL DESCRIPTION FROM VERTICAL DDA]

EXHIBIT Q

CITY AND PORT SPECIAL PROVISIONS

The Municipal Code (available at www.sfgov.org) and City and Port policies described in this Exhibit are incorporated by reference as though fully set forth in the VDDA (collectively, the "City and Port Special Provisions"). The descriptions below are not comprehensive but are provided for notice purposes only; Vertical Developer is charged with full knowledge of and compliance with each applicable requirement, whether or not summarized below. Vertical Developer understands and agrees that its failure to comply with any provision of this Agreement relating to any such code provision shall be deemed a material breach of this Agreement and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Exhibit and not defined in this Agreement shall have the meanings ascribed to them in the cited ordinance.

1. Nondiscrimination.

(a) Covenant Not to Discriminate. In the performance of this Agreement, Vertical Developer covenants and agrees not to discriminate 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 or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Vertical Developer, any City and County employee working with Vertical Developer, any applicant for employment with Vertical Developer, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Vertical Developer in the City and County of San Francisco.

(b) Subleases and Other Contracts. Vertical Developer shall include in all subleases and other contracts relating to the Property a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 28.1(a) above. In addition, Vertical Developer shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Vertical Developer does not as of the date of this Agreement and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the Lease Commencement Date, Vertical Developer shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Vertical Developer understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of $50.00 for each person for each calendar day during

which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Vertical Developer and/or deducted from any payments due Vertical Developer.

2. Requiring Health Benefits for Covered Employees.

Unless exempt, Vertical Developer agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Vertical Developer shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Vertical Developer meets the requirements of a "small business" by the City pursuant to Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with Section 28.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this Agreement for violating the HCAO, Vertical Developer fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Vertical Developer fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Property entered into by Vertical Developer shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Vertical Developer shall notify the Office of Labor Standards Enforcement ("OLSE") when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Vertical Developer shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Property. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Vertical Developer based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Vertical Developer with notice and an opportunity to cure the violation.

(e) Vertical Developer shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Vertical Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Vertical Developer shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Vertical Developer shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Vertical Developer shall provide the City with access to pertinent records relating to any Vertical Developer's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Vertical Developer at any time during the Term. Vertical Developer agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than $25,000.00 (or $50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed $75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed $75,000.00 in the fiscal year.

3. First Source Hiring.

The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Vertical Developer acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Vertical Developer acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this Agreement.

4. Local Business Enterprises.

Port Commission encourages the participation of local business enterprises ("LBEs") in Vertical Developer's operations. Vertical Developer agrees to consult with CMD to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: http://sfgov.org/cmd/lbe-certification-0.

5. Indoor Air Quality.

Developer agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

6. Prohibition of Tobacco Sales and Advertising.

Vertical Developer acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Property. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

7. Prohibition of Alcoholic Beverages Advertising.

Vertical Developer acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Property. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

8. Graffiti Removal.

Vertical Developer agrees to remove all graffiti from the Property, including from the exterior of the Facility if included within the Property, within forty-eight (48) hours of the earlier of Vertical Developer's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "Graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Agreement or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

9. Restrictions on the Use of Pesticides.

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Vertical Developer shall not use or apply or allow the use or application of any pesticides on the Property, and shall not contract with any party to provide pest abatement or control services to the Property, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Vertical Developer may need to apply to the Property during the term of this Agreement, (ii) describes the steps Vertical Developer will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Vertical Developer's primary IPM contact person with the City. Vertical Developer shall comply, and shall require all of Vertical Developer's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Vertical Developer were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Vertical Developer to keep certain records and to report to City all pesticide use by Vertical Developer's staff or contractors. If Vertical Developer or Vertical Developer's contractor will apply pesticides to outdoor areas, Vertical Developer must first obtain a written

recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

10. MacBride Principles Northern Ireland.

Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

11. Tropical Hardwood and Virgin Redwood Ban.

Port and the City urge Vertical Developer not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Vertical Developer shall not provide any items to the construction of Alterations, or otherwise in the performance of this Agreement which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Vertical Developer fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Vertical Developer shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

12. Preservative-Treated Wood Containing Arsenic.

Vertical Developer may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Vertical Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Vertical Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

13. Notification of Limitations on Contributions.

If this Agreement is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 13 shall apply. Through its execution of this Agreement, Vertical Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Vertical Developer

acknowledges that the foregoing restriction 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. Vertical Developer further acknowledges that, if applicable, the prohibition on contributions applies to each Vertical Developer; each member of Vertical Developer's board of directors, and Vertical Developer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Vertical Developer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Vertical Developer. Additionally, Vertical Developer acknowledges that if this Section 28.13 applies, Vertical Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

14. Sunshine Ordinance.

In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

15. Conflicts of Interest.

Through its execution of this Agreement, Vertical Developer acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Vertical Developer becomes aware of any such fact during the Term, Vertical Developer shall immediately notify the Port.

16. Drug-Free Workplace.

Vertical Developer acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

17. Public Transit Information.

Vertical Developer shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Vertical Developer employed on the Property, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Facility and encouraging use of such facilities, all at Vertical Developer's sole expense.

18. Food Service and Packaging Waste Reduction Ordinance.

Vertical Developer agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Agreement, Vertical Developer agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Vertical Developer agrees that the sum of one hundred dollars ($100.00) liquidated damages for the first breach, two hundred dollars ($200.00) liquidated damages for the second breach in

the same year, and five hundred dollars ($500.00) liquidated damages for-subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Vertical Developer's failure to comply with this provision.

19. San Francisco Bottled Water Ordinance. Vertical Developer is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the Property with attendance of more than 100 people.

20. Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Vertical Developer agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12T"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Vertical Developer who would be or are performing work at the Property.

(b) Vertical Developer shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Property, and shall require all subtenants to comply with such provisions. Vertical Developer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Vertical Developer and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Vertical Developer and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Vertical Developer and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Vertical Developer and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Vertical Developer or subtenant at the Property, that the Vertical Developer or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Vertical Developer and subtenants shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Property and at other workplaces within San Francisco where interviews for job opportunities at the Property occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Property or other workplace at which it is posted.

(g) Vertical Developer and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any

rights or remedies available under Chapter 12T or this Agreement, including but not limited to a penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

(h) If Vertical Developer has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

21. Southern Waterfront Community Benefits and Beautification Policy.

The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Vertical Developer shall provide community benefits and beautification measures in consideration for the use of the Property. Examples of desired benefits include: (i) beautification, greening and maintenance of any outer edges of and entrances to the Property; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Vertical Developer's interaction with Port, neighbors, visitors and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the Property that are low-emission diesel equipment and utilize biodiesel or other reduced particulate emission fuels; (v) commitment to use low impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the Property of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified by the CMD as "Local Business Enterprises" under the City's Local Business Enterprise and Non-Discrimination Ordinance (SF Administrative Code Chapter 14B, as amended); and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Vertical Developer agrees to provide Port with documents and records regarding these activities upon Port's request.

22. Local Truckers.

As material consideration for Port's agreement to enter into this Agreement, Vertical Developer agrees that, for all directly contracted or service agreement trucking opportunities associated with Vertical Developer's operations at the Property, including, without limitation, hauling of materials on and off the Property, Vertical Developer shall make good faith efforts to first use Local Truckers.

For purposes of this Section, "truckers" means a business that provides trucking services for a profit. "Local truckers" means those truckers that are certified by the Contract Monitoring Division of the City's General Services Agency as "Local Business Enterprises" pursuant to the City's Local Business Enterprise and Non-Discrimination in Contracting Ordinance as amended from time to time (Administrative Code Chapter 14B.)

To the extent that Vertical Developer in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Vertical Developer shall use Local Truckers for a minimum of sixty percent (60%) of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the sixty percent (60%) requirement; equipment rental and disposal fees will not be counted. Notwithstanding the foregoing, if Vertical Developer fails to meet the sixty percent (60%) minimum, Vertical Developer shall not be in default of this provision so long as Vertical Developer first offered trucking opportunities to Local Truckers, and such Local Truckers were unavailable or unwilling to perform the work.

Vertical Developer shall submit a monthly report to the Port and CMD stating the total cost to Vertical Developer of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers by the Vertical Developer. The monthly report shall document all truckers who conducted contract or service agreement work for Vertical Developer, and identify those truckers which are Local Truckers. If Vertical Developer fails to meet the 60% minimum in any month, the report shall document Vertical Developer's good faith outreach efforts to contact Local Truckers and the reasons that such work could not be conducted by Local Truckers. At Port or CMD's request, Vertical Developer shall provide additional documentation required to ensure Vertical Developer's compliance with this provision. Vertical Developer's failure to comply with this Section shall be deemed a material breach under the Lease subject to the default provisions of Section 21 of this Agreement.

23. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings.

Vertical Developer shall not install or permit any vending machine on the Property without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Vertical Developer agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Property or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Agreement. Without limiting Port's other rights and remedies under this Agreement, Port shall have the right to require the immediate removal of any vending machine on the Property that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Property is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

24. Employee Signature Authorization Ordinance. (S.F. Admin Code §§ 23.50-23.56)

The City has adopted an Employee Signature Authorization Ordinance, which requires employers of employees in hotel or restaurant projects on public property with 50 or more full-time or part-time employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Developer agrees to comply with the requirements of the ordinance, if applicable, including any requirements applicable to its successors, as specified in Administrative Code section 23.54.

25. Resource-Efficient Facilities and Green Building Requirements. (Env. Code ch. 7)

Vertical Developer agrees to comply with all applicable provisions of the Environment Code relating to resource-efficiency and green building design requirements.

26. Diesel Fuel Measures. (Env. Code ch. 9)

Consistent with the City's Greenhouse Gas Emissions Reduction Plan (Env. Code § 903) to reduce greenhouse gas emissions in the City, Vertical Developer must minimize exhaust emissions from operating equipment and trucks during construction. Vertical Developer's compliance with MMRP Mitigation Measure M-AQ-1a will satisfy this requirement.

27. All-Gender Toilet Facilities. If applicable, Vertical Developer shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Property, where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section.

27. Local and First Source Hiring. Vertical Developer shall comply with the provisions of Section 21.1 of the VDDA.

28. Prevailing Wage and Working Conditions. Vertical Developer shall comply with the provisions of Section 21.2 of the VDDA.

EXHIBIT P FORM OF VERTICAL DEVELOPER ESTOPPEL CERTIFICATE

The undersigned, [_____], a [_____] ("**Vertical Developer**"), is the Vertical Developer under that certain Vertical Disposition and Development Agreement dated as of _____, 20XX (the "**Vertical DDA**"), by and between the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission ("**Port**") and Vertical Developer, in connection with the development of the real property commonly known as _____, as more particularly described in the Vertical DDA (the "**Property**"). This Estoppel Certificate is provided to Port in connection with a proposed Transfer of the Vertical DDA as contemplated under Section 23.3 thereof.

Vertical Developer hereby certifies to Port the following as of the date set forth below:

1. The Effective Date of the Vertical DDA is _____, 20XX.

2. The Vertical DDA is presently in full force and effect (as may be modified, assigned, supplemented and/or amended as set forth in ***paragraph 3*** below.

3. The Vertical DDA has not been modified, assigned, supplemented or amended except as follows:

_____

_____

4. The Vertical DDA, the Financing Plan, the License (each as defined in the Vertical DDA), and [**insert other agreements between Vertical Developer and Port, if any: (collectively, the "Property Agreements")**] represent the entire agreement between Port and Vertical Developer with respect to the Property and the PKN Project (as defined in the Vertical DDA).

5. To Vertical Developer's actual knowledge, Port is not in default or breach of the Vertical DDA/Property Agreements beyond any applicable notice and cure periods, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Vertical DDA/Property Agreements by Port.

6. To the best of Vertical Developer's knowledge, Vertical Developer is not in default or in breach of the Vertical DDA/Property Agreements beyond any applicable notice and cure periods, nor has Vertical Developer committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Vertical DDA/Property Agreements by Vertical Developer.

7. Vertical Developer is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

8. All of Vertical Developer's representations and warranties made in Section 25.3 of the Vertical DDA were true and correct when made, and are true and correct as of the date set forth below.

This Certificate shall be binding upon Vertical Developer and inure to the benefit of Port, [_____] and their respective successors and assigns.

Dated: _____, 20___.

[ ], a [_____]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT N

FORM OF CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF AND WHEN RECORDED MAIL TO:

This document is exempt from payment of a recording fee pursuant to California Government Code Sec. 27383

San Francisco Port Commission
Port of San Francisco
Pier 1
San Francisco, CA 94111
Attention: Port General Counsel

APN: SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLETION OF VERTICAL PROJECT

WHEREAS, the **CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**") and _____, a _____ (the "**Vertical Developer**") entered into a Vertical Disposition and Development Agreement dated as of _____, 20XX (the "**Vertical DDA**"), a memorandum of which was recorded on _____, 20XX, in the Office of the Recorder of the City and County of San Francisco, in Reel _____, of the Official Records, at Image _____, setting forth the rights and obligations of the Vertical Developer with respect to the construction of the PKN Project on that certain real property situated in the City and County of San Francisco, State of California, which property is particularly described in ***Exhibit A*** attached hereto and made a part hereof (the "**Property**"). Except as otherwise defined herein, capitalized terms shall have the meanings given them in the Vertical DDA;

WHEREAS, pursuant to the Vertical DDA, Port conveyed fee title to the Property to Vertical Developer on _____, 20__;

WHEREAS, Port has conclusively determined that Vertical Developer has Completed the Vertical Project and fully performed all obligations under the Vertical DDA in accordance with its terms; and

WHEREAS, as stated in the Vertical DDA, Port's determination regarding the Completion of the Vertical Project is not directed to, and thus Port assumes no responsibility by virtue of this Certificate of Completion for, any of the Project Requirements or compliance with applicable Laws, including applicable building, fire, or other code requirements, conditions to occupancy of any improvement, or other applicable Laws.

NOW THEREFORE, as provided in the Vertical DDA, and subject to the foregoing provisions hereof, Port does hereby certify that the Vertical Project has been fully performed and

completed as aforesaid as of _____, 20___ (the "**Effective Date**") and that the Vertical DDA is terminated (other than the provisions that expressly survive the expiration or termination of the Vertical DDA) as of the Effective Date.

IN WITNESS WHEREOF, Port has duly executed this instrument this ____ day of _____, 20___.

THE CITY AND COUNTY OF SAN FRANCISCO,
operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Deputy City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer),
appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

EXHIBIT M

FORM OF ARCHITECT'S CERTIFICATE

TO: Port of San Francisco
Pier 1
San Francisco, California 94111

Completion of Vertical Project at Pier 70: _____ [insert address/Project name]

DATE: _____

FROM: Architect of Record, _____

The statements herein refer only to the Construction Documents prepared by the Architect. Any and all construction documents prepared by others, such as engineers, consultants or contractors, are not included in these representations. This Architect's Certificate is being provided pursuant to Section 17.1(b) of that certain Vertical Disposition and Development Agreement dated _____, 20__ (the "**Vertical DDA**") between the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission and _____, a _____. Capitalized terms used herein have the meanings given them in the Vertical DDA.

We hereby declare that we are architects licensed in the State of California and that we prepared the final Construction Documents for the Vertical Project. As Architect of Record for the construction of the Vertical Project, to the best of our knowledge, we hereby declare as follows:

1. The Vertical Project has been completed in accordance with the final Construction Documents except as noted on ***Schedule A*** attached hereto (collectively, the "**Plans**"). The Plans describe the Vertical Project, completely and accurately, depict all material parts of the Vertical Project and have been completed with the standard of care exercised in this profession.

2. Based on our observations, the construction of the Vertical Project has been performed in a good and worker-like manner, except as may be noted on Schedule A attached hereto.

3. In our professional opinion, the completed Vertical Project complies with all applicable local, state, federal laws, regulations and ordinances in all material respects.

4. We have been notified by our client, the Vertical Developer, that the required Regulatory Approvals, including necessary building permits, from all Regulatory Agencies related to the Vertical Project have been issued and are in force, and there is not an undischarged violation of applicable Laws of which we have notice as of the date hereof, except as may be noted on ***Schedule A*** attached hereto.

_____[insert Architect Firm]

By: _____
Name: _____
Title: _____

SCHEDULE A

EXCEPTIONS TO ARCHITECT'S CERTIFICATE

DATED _____

The statements made on the Architect's Certificate to which this Schedule A is attached are subject to the following exceptions:

EXHIBIT L-2

FORM OF COMPLIANCE DETERMINATION

COMPLIANCE DETERMINATION
(Parcel K North Compliance)

This Compliance Determination (this "**Determination**") relates to the Vertical Disposition and Development Agreement (Parcel K North) (the "V**DDA**") between the City and County of San Francisco, acting by and through the San Francisco Port Commission (the "**Port**") and PKN, LLC (including its successors, "**Vertical Developer**"), which was recorded in the Official Records of the City and County of San Francisco as Document No. _____. All capitalized terms used in this Memorandum are defined in the DDA or its Appendix.

Developer submitted an SOP Compliance Request for the following PKN Horizontal Improvements in accordance with *VDDA § 16.4(b) (Compliance Determination)*:

_____
_____
_____
_____
_____
_____.

This Determination establishes that the Port has determined that Developer has completed the PKN Horizontal Improvements in compliance with the VDDA. This Determination has no precedential effect for the purpose of public ownership of PKN Horizontal Improvements.

PORT:

City and County of San Francisco, acting by
and through the San Francisco Port Commission

By:_____
Name: _____
Title: Chief Harbor Engineer

EXHIBIT L-1

REQUIRED SUBMITTALS FOR COMPLIANCE DETERMINATION

The following items must be submitted to the Port as part of the Compliance Request in accordance with VDDA § 16.5.

- ❑ Complete all work described in the permit including instructional bulletins (IBs) and notice of correction report (NCRs).
- ❑ Complete corrective work described in field observation reports produced by Vertical Developer's consultants.
- ❑ Complete as-built record drawings in the required format under Section 16.1 of the VDDA.
- ❑ Confirm PKN Horizontal Improvements built within the limits of easements and no additional rights are needed.
- ❑ Obtain sign-off from the Engineer of Record
- ❑ Obtain sign-off from the Landscape Architect of Record.
- ❑ Obtain sign-off from third party utility companies, as requested.
- ❑ Provide evidence of SFDBI or Port permit completion, including punch list.
- ❑ Prepare a binder with the following:
    - o Evidence of SFPW Americans with Disabilities Act sign-off
    - o Signed and acknowledged conditional and unconditional lien releases and waivers (in the required statutory form) from all contractors, subcontractors, materialmen, consultants, and other persons that Vertical Developer retained in connection with the work, in each instance unconditionally waiving all lien and stop notice rights with respect to the pending payment
    - o Bonds for (or reduced bonds to) 10%
    - o Conditional assignment of warranties to Port pursuant to Section 15.6 of the VDDA.
    - o Evidence of a recorded Notice of Completion by the Vertical Developer per California Civil Code section 8102
    - o Evidence that the Notice of Completion has been given to all direct contractors and claimants per California Civil Code section 8190.
    - o Preliminary Title Report
    - o Offer of Dedication for PKN Horizontal Improvements
    - o Provision of appropriate rights granted to Port for safe access for pedestrians and vehicles to Port facilities via Vertical Developer's improvements in unaccepted streets.

EXHIBIT K-2

FORM OF SUBSTANTIAL COMPLETION DETERMINATION

SUBSTANTIAL COMPLETION DETERMINATION
(Parcel K North Substantial Completion)

This Substantial Completion Determination (this "**Determination**") relates to the Vertical Disposition and Development Agreement (Parcel K North) (the "**VDDA**") between the City and County of San Francisco, acting by and through the San Francisco Port Commission (the "**Port**") and [Vertical Developer], LLC (including its successors, "**Vertical Developer**"), which was recorded in the Official Records of the City and County of San Francisco as Document No. _____. All capitalized terms used herein are defined in the VDDA.

Developer submitted a Substantial Completion Determination Request for the following PKN Horizontal Improvements in accordance with *VDDA § 16.1 (Substantial Completion Determination Request)*:

_____
_____
_____
_____
_____
_____.

This Determination establishes that the Port has determined that Vertical Developer has substantially completed the above-referenced PKN Horizontal Improvements in compliance with the VDDA. This Determination has no precedential effect for the purpose of public ownership of PKN Horizontal Improvements.

PORT:

City and County of San Francisco, acting by
and through the San Francisco Port Commission

By:_____
Name: _____
Title: Chief Harbor Engineer

EXHIBIT K-1

REQUIRED SUBMITTALS FOR SUBSTANTIAL COMPLETION DETERMINATION

The following items must be submitted to the Port as part of a Substantial Completion Determination Request in accordance with VDDA § 16.3.

- ☐ Substantially Complete all work described in the permit including instructional bulletins (IBs) and notice of correction report (NCRs) pertaining to the applicable Port Acceptance Item that is the subject of this Substantial Completion Request.
- ☐ Confirm applicable Port Acceptance Item built within the limits of easements and no additional rights are needed.
- ☐ Obtain sign-off from third party utility companies, as requested.
- ☐ Prepare a binder with the following:
    - Evidence of SFPW Americans with Disabilities Act sign-off.
    - Provision of appropriate rights granted to Port for safe access for pedestrians and vehicles to Port facilities via Vertical Developer's improvements in unaccepted streets.

EXHIBIT J

MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COOPERATION

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

THE PORT COMMISSION OF SAN FRANCISCO

Regarding the development of the Pier 70 Waterfront Site
Reference Date: MAY 2, 2018

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MEMORANDUM OF UNDERSTANDING

REGARDING INTERAGENCY COOPERATION

(Pier 70 28-Acre Site)

This **MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COOPERATION** (Pier 70 Waterfront Site), referred to in the Transaction Documents as the Interagency Cooperation Agreement (this "**ICA**") and dated for reference purposes as of _____, 2018 (the "**Reference Date**") is between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**"), acting by and through the Mayor, the Board of Supervisors, the City Administrator, the Director of Public Works, the San Francisco Municipal Transportation Agency and the San Francisco Public Utilities Commission (the "**Other City Parties**"), and the City, acting by and through the **PORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO** (the "**Port**" or the "**Port Commission**") (the Other City Parties and the Port, each a "**Party**"). This ICA is one of the Transaction Documents relating to the Project described in the Disposition and Development Agreement between the Port and FC Pier 70, LLC ("**Developer**").

Initially capitalized and other terms not defined herein are defined in the Appendix or other Transaction Documents as specified in the ICA Definitions Appendix attached hereto, which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents.

RECITALS

A. This ICA specifies the roles and procedures that will apply to Other City Parties and consenting City Agencies assisting the Port in implementing the development of the 28-Acre Site in accordance with the Governing Rules, including, without limitation, with respect to:

1. Subdivision of the 28-Acre Site;

2. Construction of Horizontal Improvements for the Project, as described in the Infrastructure Plan (**ICA Attachment A**); and

3. Implementation of Project mitigation measures.

B. Developer, and its Transferees or Vertical Developers under the DDA, will develop the Horizontal Improvements and Vertical Improvements in Phases, as more particularly described in the DDA.

C. The SUD, together with the Design for Development, specifies the permitted land uses and development standards and guidelines for the 28-Acre Site. The procedures for design review and approval for new buildings and rehabilitation of historic buildings within the 28-Acre Site are specified in the SUD.

D. This ICA memorializes a process for the Port, Other City Parties, and consenting Other City Agencies to cooperate in undertaking, administering, performing and expediting review of all applications pertaining to Horizontal Development of the Project Site, including its subdivision, review and approval of Phase Applications, Master Utility Plans, design review of Park Parcels and Public ROW streetscape improvements, the review of Improvement Plans and the review, acceptance and approval of Horizontal Improvements for the Project that will be

acquired by the Port or Other City Agencies as Acquiring Agencies under the Acquisition Agreement.

AGREEMENT

1. PURPOSE AND INTENT

1.1. Priority Project. In adopting this ICA by Board Resolution No. 403-17, based on Project benefits to the City as set forth in the DDA and the DA, the City has determined in accordance with Campaign and Governmental Conduct Code section 3.400 that a public policy basis exists for this Project to receive priority processing. The City and the Port both found a compelling public policy in expedited review and permitting processes, which will minimize the negative financial impacts on the Port's rent revenues and Public Financing Sources that will be used to pay for the Horizontal Improvements.

1.2. Findings. Development of the Project in accordance with the Governing Rules, including the DDA, Development Agreement, and Project Approvals:

(a) is in the best interests of the City and County and the health, safety, and welfare of its residents;

(b) furthers the public purposes of applicable Governing Rules; and

(c) is a priority for which the City, Port and Other City Agencies will act as expeditiously as is feasible to review and facilitate the processing of applications and implementation of Project development reviews and as described in this ICA.

1.3. Benefit. This ICA is:

(a) for the Parties' mutual benefit;

(b) an agreement for ongoing interdepartmental transfers of funds under Charter section B7.320, terminable only by the expiration of this ICA or by the Parties' agreement with Board of Supervisors approval by resolution and the Mayor's concurrence; and

(c) for the benefit of and enforceable by Developer and Developer Parties, Transferees and Vertical Developers as third-party beneficiaries to the extent of their rights and obligations under the Development Agreement and the DDA, subject to the limitations in Developer's Consent and further provided that neither the Port nor any Other City Agencies will be liable to Developer for damages.

1.4. Intent. The Parties intend for this ICA to provide the framework for cooperation between and among the Port and Other City Agencies with respect to review and approval of applications to the Port and Other City Agencies related to the Horizontal Improvements, including Subdivision Maps, Improvement Plans and Construction Permits for Horizontal Improvements. Accordingly, the Port and Other City Agencies have agreed to proceed expeditiously and use commercially reasonable efforts to comply with this ICA.

2. EFFECTIVE DATE; TERM

2.1. Effective Date. This ICA will become effective as of the Reference Date.

2.2. Term.

(a) Effect of DDA Termination. The term of this ICA will end on the date that the DDA Term expires including any extension of the DDA Term and any periods of Excusable Delay under the DDA or Development Agreement. Partial termination of the DDA as to any Phase or other portion of the 28-Acre Site will terminate this ICA and City Agencies' obligations under this ICA for the terminated portion of the 28-Acre Site. Notwithstanding the foregoing, if the DDA is terminated as to a Vertical Development Parcel and a Vertical DDA is executed for said Vertical Development Parcel, the ICA term will expire, extend or terminate as to all Other City Agencies' obligations associated with the development of said Vertical Development Parcel and its associated obligations, with the Vertical DDA.

(b) Ongoing Port Authority under ICA. In accordance with Charter section B7.320, the Port's authority to disburse funds under Section 3.6(e) (Distribution of Reimbursements) herein will continue until the Board passes and the Mayor approves a resolution terminating the Port's authority to make disbursements.

3. COOPERATION

3.1. Agreement to Cooperate. The Other City Parties and the Port will aid each other, and the Other City Parties and the Port will cooperate with and amongst all City Agencies, to expeditiously and with due diligence implement the Project in accordance with the Governing Rules to undertake and complete all actions or proceedings reasonably necessary or appropriate to implement the Project. Except as otherwise provided in the Transaction Documents or Project Approvals, nothing in this ICA with regard to such cooperation obligates the City or the Port to spend any money or incur any costs except Other City Costs or Port Costs that Developer will, to the extent provided herein, reimburse under the DDA or administrative costs that Developer or Vertical Developers are obligated to reimburse through Administrative Fees.

3.2. City Approval. The City's approval and adoption of this ICA will be evidenced by the signatures of the Mayor, the Clerk of the Board of Supervisors, the Controller, the City Administrator, the Port and the Director of Public Works.

3.3. Consenting City Agencies.

(a) Written Consents. Based upon the City's approval and adoption of this ICA, as described in Section 3.2 herein, each City Agency that has consented will comply with this ICA.

(b) Specific Agencies. The following City Agencies have, as of the date of this ICA signed this Agreement, a Consent or separate Transaction Document to implement the relevant portions of this ICA: (i) the Mayor's Office, including OEWD, MOHCD, and MOD; (ii) the General Services Agency, including San Francisco Public Works; (iii) the Port Commission; (iv) the San Francisco Municipal Transportation Agency; and (v) the San Francisco Public Utilities Commission.

(c) Additional Agencies. During the course of the Project, the City and the Port, in consultation with Developer, may obtain the Consents of additional City Agencies not listed above. Each additional Consent will be substantially similar in form to the currently attached Other City Agency Consents and will be deemed to be attached to this ICA and effective when the additional Other City Agency delivers its executed Consent to the Port with copies to Public Works and Developer. Thereafter, Developer will be obligated to pay the Other City Costs of any additional consenting Other City Agencies.

3.4. Cooperation to Obtain Permits for Regulatory Agencies Other than City Agencies. Subject to this ICA and the MMRP, the City will cooperate with the Port and with reasonable requests by Developer to obtain Regulatory Approvals from any Regulatory Agency other than a City Agency that is necessary or desirable to effectuate and implement development of the Project in accordance with the Governing Rules. The City's commitment under this ICA is subject to the conditions listed below.

(a) Coordination. Developer consults and coordinates with applicable City Agencies with jurisdiction in Developer's efforts to obtain the Regulatory Approval.

(b) Continuing City or Port Obligations. If Regulatory Approvals include conditions that entail maintenance by or other obligations of the permittee or co-permittees that continue after the City (including the Port) accepts the completed Horizontal Improvements, then when the City (including the Port) accepts any Horizontal Improvements constructed by Developer that have continuing obligations under a Regulatory Approval, the City (including the Port) will take reasonably necessary steps at Developer's request to remove Developer as the named permittee or co-permittee from the Regulatory Approval if either: (i) the continuing obligations are designated solely as the City's or Port's responsibility under this ICA, the Transaction Documents, or related Project Approvals; or (ii) the City or Port in its sole discretion has agreed to accept sole responsibility for the obligations.

3.5. Other City Actions. The Mayor, Port and the Other City Agencies will take actions and engage in proceedings subject to this ICA on behalf of the City following reasonable requests by Developer, including those listed below.

(a) Trust Exchange. Assisting the Port in closing the Public Trust Exchange authorized by AB 418.

(b) Subdivision. Coordinating review and approval of proposed subdivision Tentative Maps, Final Maps, Improvement Plans and Public Improvement Agreements, and permits for Horizontal Improvements.

(c) Street-Related Actions. Coordinating expeditious review of Developer's Streetscape Master Plan submittal, and instituting and completing proceedings for opening, closing, vacating, widening, or changing the grades of Public ROWs and for other necessary modifications of the streets, the street layout, and other public rights-of-way in the 28-Acre Site, including any requirement to issue permits to abandon, remove, and relocate public utilities as allowed under a City franchise and city utilities (if applicable) within the Public ROW as necessary to carry out the Project in accordance

with the Governing Rules, except where the City lacks such authority or required property rights,.

(d) Construction Documents Review. Coordinating expeditious review of Construction Documents and issuance of construction and access permits for all stages of Horizontal Improvements within the time frames of this ICA and consistent with the standards set forth in the Governing Rules.

(e) Acceptance. Coordinating reviews and expeditiously taking timely actions to make construction completeness determinations or to notify Developer of deficiencies, to release security and, where applicable, to accept Horizontal Improvements from Developer in accordance with the San Francisco Subdivision Code and San Francisco Subdivision Regulations, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code. Each applicable Acquiring Agency shall accept full, complete, and functional streets and infrastructure as designed in conformance with the Subdivision Regulations and utility standards, and constructed in accordance with the project plans and specifications, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code. Without limiting the foregoing, the Port and Other City Parties acknowledge that the Infrastructure Plan sets forth standards for certain street segments that will require Developer to request exceptions to the Subdivision Code and the Subdivision Regulations. As of the DDA Reference Date, the Director of Public Works has not authorized such exceptions.

(f) State and Federal Assistance. Assisting the Port in pursuing, and reasonably considering requests from Developer to pursue, state and federal grants on behalf of the Project, below-market-rate loans, and other financial assistance or funding to assist in paying for Horizontal Improvements, Site Preparation, Associated Public Benefits (as defined in the Appendix) and other community benefits. The City will allocate any state and federal assistance that the City receives, subject to a Board of Supervisors' resolution to accept and expend, for the Project to the Port for use in accordance with the DDA.

(g) Environmental Review. Complying with and implementing Mitigation Measures for which the City is responsible and assisting with evaluating and performing any subsequent environmental review to the extent required under CEQA Guidelines section 15162.

(h) Affordable Housing. Using its good faith efforts to: (i) select a qualified developer and operator for any Affordable Housing Parcel; (ii) assist the selected affordable housing developers with any application for affordable housing sources, including 9% Low Income Housing Tax Credits under the City's geographic apportionment to the extent the applicants fail to secure an allocation of 9% Low Income Housing Tax Credits from a statewide set-aside; and (iii) assist Vertical Developers of mixed-income residential development with funding applications.

(i) Historic Tax Credits. Using its good faith efforts to assist Developer in pursuing Historic Tax Credits and other incentives available to encourage the

rehabilitation of Building 2, Building 12, and Building 21 in accordance with the Secretary's Standards.

3.6. Cost Recovery.

(a) Other City Agency Costs. In consideration of the benefits Developer will receive under this ICA, Developer will reimburse the Other City Agencies for costs incurred to comply with this ICA as and to the extent provided in the *DDA Article 19 (Port and City Costs)*, *Development Agreement § 4.4 (Payment of Planning Costs)*, and this Section. The DDA will control over any conflict with the DA and this ICA, and this ICA will control over any conflict with the DA regarding reimbursement of Other City Costs.

(b) Port and Other City Costs under ICA. The Parties agree that the City will incur all of the following to implement this ICA after the DDA Reference Date: (i) costs of the Project Coordinator if contracted by an Other City Agency; (ii) costs of Other City Agencies that sign this ICA or an attached Consent; and (iii) costs of additional Other City Agencies that later submit Consents that Developer countersigns. Developer will have no other obligation to reimburse costs incurred by any Other City Agency unless specified in another Transaction Document or required as part of an Administrative Fee.

(c) Compiled Other City Costs Statement. The Port will collect quarterly statements from Other City Agencies for costs incurred under this ICA, including work by Port staff and consultants. The Port will prepare and deliver a single combined quarterly statement of Other City Costs to the Port. The Port will prepare one Port Quarterly Report each quarter that shows the amount of Other City Costs and Port Costs billed by each City Agency.

(d) Port Quarterly Reports.

(i) Under *FP § 9.2 (Port Accounting and Budget)*, the Port must make reasonable efforts to provide a Port Quarterly Report of Other City Costs and Port Costs to Developer within six months after the date the costs are incurred. Other City Agencies agree to make reasonably diligent efforts to include all of their Project-related costs incurred in each quarterly statement.

(ii) If an Other City Agency fails to submit or to include any of its Project-related costs incurred in a quarterly statement provided to the Port, the Other City Agency will have a grace period, which it may exercise once within any 12-month period, to add the omitted Other City Cost to a Port Quarterly Report. No City Agency will have the right to recover any Other City Cost or Port Cost that is not included in a Port Quarterly Report within 12 months after the cost was incurred if the grace period is exercised, or within 6 months otherwise.

(e) Distribution of Reimbursements.

(i) Developer will reimburse Other City Costs and Port Costs by payments to the Port in accordance with *DDA § 19.1(a) (Reimbursement)*. Under this ICA, the Port will be responsible for disbursing payments to the Other City Agencies.

(ii) The DDA requires Developer and the Port to meet and confer in good faith to attempt to resolve any payment dispute. The Port will invite the affected Other City Agency to any meeting involving a dispute over its Other City Costs.

(iii) The Port will have no obligation to pay any Other City Agency for Other City Costs that Developer withholds from payment or that the Other City Agency did not timely submit for payment under Section 3.6(d) (Port Quarterly Reports) herein.

3.7. No Harbor Fund or General Fund Commitment. This ICA is not intended to, and does not, create any commitment of the Port's Harbor Fund or the City's General Fund in any manner that would violate the debt limitations under article XVI, section 18 of the California Constitution or of the City Charter, including section 3.105 (Controller responsibility for General Fund), section 8A.105 (Municipal Transportation Fund), section 8B.121 (SFPUC financial assets), and section B6.406 (Port Harbor Fund).

3.8. Procedures Required Under Applicable Laws. All City actions under this ICA will be taken subject to the limitations in the DA.

4. REVIEW PROCEDURES FOR STREETSCAPE MASTER PLAN; IMPROVEMENT PLANS; INSPECTIONS; AND ACCEPTANCE.

4.1. Expeditious Processing. City Agencies will process expeditiously and with due diligence all submissions, applications and requests by Developer for Future Approvals, including all permits, approvals, agreements, plans, and other actions that are necessary to implement the Project, including without limitation, phased Final Maps, subsequent Tentative Maps, subsequent Final Maps, Improvement Plan Submittals, Construction Documents, Construction Permits, construction inspections, determinations of completeness, releases of security, acceptances and acquisition of Horizontal Improvements.

4.2. Intentionally Omitted.

4.3. Improvement Plans for Horizontal Improvements-Generally.

(a) Coordination of Plan Reviews. Acknowledging that the Port Commission retains approval of Schematic Drawings for Park Parcels and the Port Executive Director retains approval of the Streetscape Master Plan for Public ROWs (as described in the DDA), the Port and the City will share responsibility for subsequent review of final Construction Documents for Horizontal Improvements for consistency with the Governing Rules, provided that: (i) for Park Parcels, Port will coordinate reviews by each Other City Agency, as applicable, and approve Improvement Plans for Horizontal Improvements in Park Parcels; and (ii) for Public ROWs, Public Works will coordinate reviews by City Agencies and for all other Horizontal Improvements (including review and approval of Master Utility Plans). Improvement Plans for Horizontal Improvements will generally be reviewed as part of the subdivision process.

(b) Port Review. Except to the extent incorporated into the Port Building Code, the Port will not review any Improvement Plans for compliance with any state or federal laws.

4.4. Processing of Improvement Plans and Issuance of Construction Permits.

(a) Consistency with Project Approvals. The Project Approvals include an Infrastructure Plan attached hereto as **Attachment A** that has been reviewed and approved by Public Works, SFPUC, SFFD, Port and SFMTA. The SFPUC will review and approve the final Master Utilities Plans in accordance with Section 4.12 hereof prior to approval of Improvement Plans. Accordingly, the applicable Permitting Agency will issue Construction Permits for the applicable Horizontal Improvements if the Permitting Agency and other reviewing Other City Agencies find that the Improvement Plans are consistent with the Governing Rules, including the Infrastructure Plan, Master Utilities Plans, Tentative Map Conditions of Approval and the City's technical specifications related to engineering documents under the Subdivision Regulations, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code.

(b) Exceptions and Design Modifications. Without limiting the foregoing, in connection with its review of Improvement Plans to be attached to Public Improvement Agreements, Public Works (and the Port, if required), in consultation with applicable Other City Agencies, will consider requests for exceptions and design modifications from the standards set forth under the Subdivision Regulations and will work together with Developer in good faith. In furtherance thereof, Developer shall identify in its Basis of Design Report the type of, geographic location of, and rationale for all exceptions that it intends to request. Developer shall provide Public Works and the Port the names of persons in all affected City Agencies Developer has asked to consider any such requests for exceptions. Within 90 days from the submittal of the Basis of Design Report, the Director will provide Developer with a written response on the proposed exceptions, identifying (i) exceptions that Developer may submit for approval as identified in the Basis of Design Report; (ii) modifications to proposed exceptions that Developer should make before a formal submittal of the exception request; (iii) preliminary conditions or criteria that proposed exceptions would be subject to; (iv) additional items that may require an exception not listed in the Basis of Design Report; and (v) exceptions that the Director is unlikely to recommend for approval. The City may request additional information as it reasonably determines necessary to make these determinations. The additional information may extend the time required to provide the written responses on the exceptions.

(c) Deferred Infrastructure. Developer has proposed to submit applications for Horizontal Improvements that will include requests for Deferred Infrastructure. Developer's current concept for Deferred Infrastructure is described in Attachment C attached hereto for discussion purposes only. Certain aspects of the proposed Deferred Infrastructure concept in Attachment C would require an amendment to the current Subdivision Code and Subdivision Regulations or an exception granted by the Director of Public Works under Subdivision Code section 1312. It is also contemplated that the Board of Supervisors and the Director of Public Works may consider amending the Subdivision Code and the Subdivision Regulations in a manner that would address requests for Deferred Infrastructure described in Attachment C. The Port and Other City Parties will work in good faith to explore the proposed approach to Deferred Infrastructure subject to the following understanding:

(i) Nothing in this ICA obligates an Acquiring Agency to accept Deferred Infrastructure.

(ii) Developer and Port may apply for exceptions to the Subdivision Code and Subdivision Regulations, as may be amended.

(d) Plan Submittals. The DDA contemplates that the Project will be implemented in Phases. The Developer under each Phase (which may include Vertical Developers with respect to Deferred Infrastructure) will submit a set of Improvement Plans for Horizontal Improvements for review by Other City Agencies and Port (each, an "**Improvement Plan Submittal**"), as more particularly described in this Section 4.4. Each Improvement Plan Submittal shall be reviewed and approved by all applicable City Agencies and the Permitting Agency. Issuance of a Construction Permit shall be in accordance with this Article 4. The Improvement Plan Submittals shall be submitted for each Phase as one or more of the following:

(i) Demolition and Utility Relocation Plans, Mass Grading Plans, Ground Improvement Plans, and Shoreline Repair Plans (collectively, "**Site Preparation Plans**") will be submitted to the Port as separate permit applications or in a combined permit application, as deemed appropriate by Developer.

(ii) Improvement Plans, consisting of improvement and engineering plans (but not Master Utilities Plans) meeting applicable City and Port specifications for the applicable Horizontal Improvements (collectively, the "**Improvement Plans**"), will be submitted to Public Works as follows:

(1) Basis of Design Report, as generally described in ICA Attachment B;

(2) First Submittal;

(3) Second Submittal; and

(4) a Permit Set that will comprise the final Improvement Plans that will be attached to the Public Improvement Agreement (the "**Permit Set**").

Each submittal after the Basis of Design Report will incorporate comments and revisions required by the reviewing City Agencies. Each Improvement Plan submittal may incorporate one or more of the Demolition, Utility Relocation and Mass Grading Plans that make up the Site Preparation Plan, as appropriate.

(iii) Park Parcel Improvement Plans will be submitted to the Port as a single permit application for each Park Parcel or may be combined with other Park Parcels, as appropriate (the "**Park Parcel Improvement Plans**"). Procedures for Port Commission review and approval of schematic design for Park Parcels is governed by Section 13.6 of the DDA.

(e) Pre-submittal Conference for Improvement Plans.

(i) Developer will request and participate in a pre-submittal conference with the Port (and the Permitting Agency, if not the Port) for the Basis of Design Report submittal at least 15 days prior to submittal. The Permitting

Agency and Developer may hold a pre-submittal conference for each subsequent Improvement Plan submittal as mutually agreed. The Permitting Agency will advise any affected Other City Agencies of, and invite them to participate in, any such pre-submittal conference.

(ii) The Permitting Agency will require Developer to provide any Other City Agencies choosing to participate with copies of materials to be discussed at any pre-submittal conference.

(f) Submittal of Improvement Plans for City Review. Prior to submittal of each Improvement Plan Submittal, Developer will provide 14 days' notice to the Permitting Agency. Within 3 business days after receipt, the Permitting Agency (or Developer, upon Permitting Agency authorization) will deliver such notice, and, upon submittal of the applicable Improvement Plan Submittal, will deliver the Improvement Plan Submittal to all other applicable City Agencies. If Developer has concurrently submitted to the Port preliminary Acquisition Prices for Phase Improvements or Deferred Infrastructure in the form of AA Exh B (Preliminary Acquisition Prices) or Acquisition Price Updates under AA § 1.3 (Acquisition Price Estimates of Components by Phase,) (as those terms are defined in the Appendix), the Port will deliver copies of any price information affecting an Other Acquiring Agency's Horizontal Improvements along with the applicable Improvement Plan Submittal.

(g) Review of Improvement Plans. The Port and each City Agency as applicable will review each Improvement Plan Submittal for consistency with the Governing Rules and Improvement Plans previously approved. Each Other City Agency will provide comments to the Port within 30 days of the Other City Agency's receipt of the Improvement Plan Submittal. Any Other City Agency that will be an Acquiring Agency for the applicable Phase Improvements or Deferred Infrastructure will also have the opportunity to state its concerns regarding the costs to operate and maintain Phase Improvements that it will acquire. Notwithstanding the foregoing, if Port and an Other City Agency disagree on their comments, then they shall work to resolve any differences in accordance with Section 4.4(i) below (Proposed Revisions). Notwithstanding the foregoing, if Developer submits the Site Preparation Plans as a combined set of two or more plan sets, the time for review will be extended by an additional 30 days.

(h) Delivery of Compiled Comments. Within 3 business days after receipt of review comments from all Other City Agencies commenting on the applicable Improvement Plan Submittal (the **"Consolidated Response Date"**), the Port will deliver all comments in a compiled format to Developer for response and revision as appropriate. Notwithstanding the foregoing, if the consultation process under Section 4.4(i) (Proposed Revisions) herein delays the Port's delivery of comments beyond the 30-day period, then Developer may invoke Administrative Delay under the DDA as described in Section 4.4(q) below.

(i) Proposed Revisions. City Agencies may propose changes to the applicable Improvement Plan Submittal that do not conflict with Governing Rules or previously approved Improvement Plans. If the City Agencies propose changes to the applicable Improvement Plan Submittal, then upon request by Developer, the applicable City Agencies and Developer will promptly meet and confer in good faith to attempt to

reach agreement on any such changes proposed for a period of not more than 30 days for the Basis of Design Report and First Submittal, and not more than 21 days for the Second Submittal and Permit Set, as any of the foregoing times may be extended by mutual agreement. Coming out of this meet and confer process, Developer will: incorporate revisions to the Site Preparation Plans and resubmit; incorporate revisions to Basis of Design Report into the First Submittal; incorporate revisions to the First Submittal into the Second Submittal; and incorporate revisions to the Second Submittal into the Permit Set.

Prior to each other resubmittal, Developer will provide at least 14 days advance notice of the resubmittal date, and the Port and all applicable Other City Agencies will have an additional 30 days for review after Developer resubmits the Improvement Plan Submittal with revisions. For each resubmitted Improvement Plan Submittal and for each subsequent Improvement Plan Submittal that incorporates revisions based on City Agency comments from the prior Improvement Plan Submittal, the Improvement Plan Submittal or the resubmittal will include: a "redline" comparison identifying all changes to the applicable Improvement Plan Submittal and a table of all comments and all responses to comments addressed in the applicable Improvement Plans Submittal or resubmittal (unless not required to be addressed, in which case the response will address the reasons for such conclusion). If the Improvement Plan Submittal or resubmittal is incomplete, inconsistent or fails to include such redlines and table, then the reviewing City Agencies will have 45 days to review the applicable Improvement Plan Submittal or resubmittal.

(j) Consultation. The Port and Other City Agencies agree to meet and attempt to resolve any differences over their respective comments within the following timeframes after delivery of comments to the Port: (i) within 30 days for a Basis of Design Report and the First Submittal of Improvement Plans of a given Phase, and (ii) within 21 days for any other Improvement Plan Submittal.

(k) Review of Improvement Plans. Subject to the foregoing process and notwithstanding Government Code section 66456.2(a), the Permitting Agency will approve, conditionally approve or disapprove the Permit Set for Improvement Plans within 30 days after the later of the Consolidated Response Date for the Second Submittal or submittal of revisions thereto in accordance with Section 4.4(i) (Proposed Revisions) above. All time periods for review and approval shall be subject to the Permit Streamlining Act (Cal. Gov't Code §§ 65920 et seq.), to the extent not inconsistent with the approval procedures set forth in this ICA, recognizing that times for approval hereunder may be shorter than those provided under the Permit Streamlining Act.

(l) SFPUC Approval of Master Utility Plans. Developer will submit Master Utility Plans to SFPUC for approval in accordance with Section 4.12 hereof.

(m) Resubmittal Upon Disapproval. If the Permitting Agency disapproves a Permit Set and Developer subsequently resubmits, the Permitting Agency, will have an additional 30 days for review from receipt of the resubmittal (which period will include consultation with other City Agencies to the extent requested by the Permitting Agency). This procedure will continue until the Permitting Agency approves the amended Permit Set.

(n) Review Standards. Unless otherwise approved by Developer in its sole discretion, neither the Permitting Agency nor any other City Agency will disapprove any Permit Set or require revisions to any other Improvement Plan Submittal on the basis of any element that conforms to and is consistent and in compliance with the Governing Rules, the Regulatory Requirements, and the Permitting Agency's or City Agency's prior approvals; or (ii) impose new conditions that conflict with the Governing Rules, the Regulatory Requirements, or its prior approvals (provided, however, that the Parties acknowledge the City has discretion to impose conditions consistent with Regulatory Requirements). Any Permitting Agency denial, or the recommendation of denial of an approval by any other City Agency to the Permitting Agency approval shall include a statement of the reasons for such denial or recommendation of denial to the Permitting Agency. Permitting Agency will immediately notify Developer of any disapproval.

(o) Extension of Review Periods. All Improvement Plan Submittals will include detailed information, and the turnaround time for the Permitting Agency and other City Agencies', and City staff for review will depend in part on the amount of new information in and the quality of a submittal, including Developer compliance with the resubmittal requirements in Section 4.4(m) above. The Permitting Agency will, and after consultation with Developer, have the right to grant reasonable extensions of time for City Agencies to review submittals and provide comments.

(p) Failure to Provide Timely Responses. Any City Agency that fails to deliver its comments on an Improvement Plan Submittal within the comment periods under this ICA, unless extended under Subsection 4.4(o) (Extension of Review Periods) above, will at Developer's request take all reasonable measures necessary to ensure that the applicable Improvement Plan Submittal will be reviewed within a period of 30 days from Developer's request.

(q) Excusable Delay. The Permitting Agency or any other City Agency's failure to act upon an Improvement Plan Submittal within the timeframes specified in in this Section 4.4, subject to extension under Section 4.4**(o)** (Extension of Review Periods) above shall be a basis for Administrative Delay under *DDA Article 4 (Performance Dates)*. In such case, Developer may claim Administrative Delay on a day-for-day basis from the required time for approval until the date of actual approval. For example, if the Outside Date in the Schedule of Performance for Commencement of Construction for Phase 1 is January 1, 2021 but the Port takes 60 days to provide comments on the applicable Improvement Plan Submittal or approve the Permit Set instead of the required 30 days, then the Outside Date for Commencement of Construction will be extended by an additional 30 days to January 31, 2021. In addition, delay in the time that the Permitting Agency actually delivers its comments to the Developer (whether caused by City Agency consultation or otherwise) will also be a basis for Administrative Delay under *DDA Article 4 (Performance Dates)* on a day-for-day basis until delivery of comments.

4.5. Inspections.

(a) Inspection Procedures. Before construction begins at the 28-Acre Site, each Acquiring Agency will be responsible for providing Developer with written procedures for inspection of Horizontal Improvements or Components that the Acquiring

Agency will acquire. Inspection procedures must be consistent with the Governing Rules.

(b) Inspection Request. Developer may initiate an inspection to determine whether Horizontal Improvements or Components are ready for their intended use and have been completed substantially in conformity with the applicable Improvement Plans and applicable Regulatory Requirements by delivering to the respective Permitting Agency, an Inspection Request. The Chief Harbor Engineer or City Engineer, as applicable, for the applicable Permitting Agency will forward copies of the Inspection Request to any applicable Acquiring Agency within 3 business days after receiving the Inspection Request and promptly coordinate inspections.

(c) Inspection. Each Acquiring Agency will be responsible for conducting a requested inspection with due diligence and in a reasonable time given the scope of the inspection but not to exceed 21 days after the City Engineer or Chief Harbor Engineer, as applicable, has transmitted Developer's Inspection Request. Within 5 business days after conducting an inspection, each Acquiring Agency must provide notice to the Permitting Agency that the Horizontal Improvement or Component has been approved as inspected or deliver the Other Acquiring Agency's punch list of items to be corrected. The City Engineer (or Port Harbor Engineer, as applicable) will compile punch lists and deliver them to the Developer within 30 days after the City Engineer (or Chief Harbor Engineer) delivered the Inspection Request.

(d) Notice to Developer. The Permitting Agency will compile any approvals and punch lists for the Horizontal Improvements and Components inspected and provide them to Developer within 3 business days after the Permitting Agencies receives inspection results from the Other Acquiring Agencies.

(e) SOP Compliance of Phase Improvements under the DDA. The DDA sets forth a process for the Chief Harbor Engineer to issue a SOP Compliance Determination when he finds that Developer has satisfied its construction obligations under the DDA, including the Schedule of Performance, for the construction of Phase Improvements. The Chief Harbor Engineer shall consult with Other City Agencies prior to issuing a SOP Compliance Determination, and each Other City Agency will respond within 30 days after request with any comments. After a 14-day cure period, if an Other City Agency fails to respond, the Chief Harbor Engineer, in his or her reasonable discretion, may issue the SOP Compliance Determination under the DDA.

4.6. Standards and Procedures for Acceptance.

(a) Any acceptance of streets and other Horizontal Improvements will occur according to the San Francisco Subdivision Code and San Francisco Subdivision Regulations, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code. The Acquiring Agency shall accept full, complete, and functional streets and infrastructure as designed in conformance with the Subdivision Regulations and utility standards, and constructed in accordance with the Permit Set, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code.

(b) From and after the Reference Date, the City Agencies will meet and confer to consider other standards and procedures for acceptance of Horizontal Improvements, including individual utility systems that are subject to the Developer's potential post-acceptance maintenance, repair, and liability until the completion of all surface and subsurface improvements in the Public ROWs in which the individual utility system is installed, and the City's acceptance of such improvements and Public ROWs.

(c) The City Agencies agree to work in good faith to enter into a memorandum of agreement, within 120 days of the submission of a complete First Submittal referenced in Section 4.4(d)(ii) herein, that will establish a framework for acceptance, ownership, maintenance and regulation of Horizontal Improvements to land owned or to be owned by the Other City Agencies or the Port ("**Acceptance and Maintenance Memorandum of Agreement**"). The following principles will guide the development of the Acceptance and Maintenance Memorandum of Agreement.

(i) The acceptance procedures will provide for diligent and expeditious processing of acceptance requests.

(ii) Permitting Agencies will introduce complete acceptance packages to the Board of Supervisors with a goal of final passage within 6 months after the date of Developer's submission of a complete request.

(iii) City or Port acceptance of Horizontal Improvements, as applicable, will include obligation of the Developer to maintain the accepted Horizontal Improvements and all facilities and components therein, excepting only portions of the full Public ROW that are ready for their intended use and purpose and are accepted by the City or of improvements that are to be maintained in accordance with the terms of an encroachment permit, as provided in the Governing Rules.

(iv) The City Agencies are entitled to seek additional information from the Developer. The additional information may extend the time frame required to finally execute the Acceptance and Maintenance Memorandum of Agreement.

(v) The Parties agree the Acceptance and Maintenance Memorandum of Agreement may be finally executed by the directors of the applicable City Agencies, unless otherwise required by the City Charter or other City law.

4.7. Streetscape Master Plan. The DDA requires the Developer to submit its final Streetscape Master Plan application to the Port within 90 days after the DDA Reference Date. Port staff will submit the Streetscape Master Plan application to applicable City Agencies, including Public Works and SFMTA. Port, and each Other City Agency, will review the Streetscape Master Plan for consistency with the DA Requirements. Each Other City Agency will provide any comments on the submittal to the Port within 30 days from the Other City Agency's receipt of the submittal. The Port must approve the Streetscape Master Plan in accordance with DDA Section 3.5 before the Chief Harbor Engineer or Director of Public Works may approve any Improvement Plans that include street improvements.

4.8. Vertical Development- Consistency Review. City Agencies will, as necessary and appropriate, coordinate reviews of Improvement Plans for Horizontal Improvements with Construction Documents for Vertical Improvements (to the extent not already addressed in Improvement Plans for Deferred Infrastructure), including Deferred Infrastructure, utility laterals

and associated facilities serving the Vertical Improvements and connection to Horizontal Improvements, to ensure consistency, to avoid development delays, to safeguard public safety, and to protect existing infrastructure.

4.9. Other Assistance. Public Works will provide additional engineering and construction management services for the Project if requested by the Port. Public Works agrees that the Port may establish work orders to obtain Public Works staff review of Improvement Plans on behalf of the Port under the Port Director's direction. If it does so, Public Works staff will be obligated to provide comments to the Port in time to permit timely transmittal to Developer.

4.10. Moratorium Streets. Section 2.4.21 of the Public Works Code provides that Public Works "shall not issue any permit to excavate in any moratorium street; provided, however, that the Director of Public Works, in his or her discretion, may grant a waiver for good cause." A moratorium street is defined as any block that has been reconstructed, repaved, or resurfaced in the preceding 5-year period. Public Works acknowledges that the Project will involve the construction of Public ROWs before adjacent Vertical Improvements are built, and that those Vertical Improvements may require street excavation for Deferred Infrastructure and to connect Deferred Infrastructure to previously-built Horizontal Improvements in the Public ROW. Public Works agrees that, to the extent that Public Works Code section 2.4.21 is applicable and construction of Vertical Improvements will require excavation within adjoining City-accepted public streets within the 5-year moratorium period, the Director of Public Works will consider granting a requested waiver, subject to reasonable conditions to protect public health, safety, and welfare, appropriate restoration requirements (which may be required under future amendments to the San Francisco Municipal Code or applicable regulations), and recovery of its actual costs incurred, on a time and materials basis.

4.11. SFMTA Matters.

(a) Prior SFMTA Review. The Permitting Agency will not issue any Construction Permit for Horizontal Improvements that include or should include Transportation Infrastructure or Transportation-Related Mitigation Measures unless SFMTA has previously reviewed and approved applicable Improvement Plans for compliance with SFMTA requirements, consistent with the Governing Rules and in accordance with the procedures governing Improvement Plans in this Article 4, and has determined compliance with all applicable Transportation-Related Mitigation Measures consistent with the MMRP.

(b) Cooperation. The Permitting Agency and Developer, and Vertical Developers, as applicable, will work collaboratively with SFMTA to ensure that Transportation Infrastructure and Transportation-Related Mitigation Measures are discussed as early in the review process as possible and that the Port, Public Works, and SFMTA act in concert with respect to these matters.

4.12. SFPUC Matters. The following will apply to SFPUC Utility Infrastructure and Utility-Related Mitigation Measures.

(a) AWSS. Developer will submit with each Basis of Design Report its AWSS Plan for the associated Horizontal Improvements. SFPUC will diligently and timely perform modeling required to support the proposed AWSS design.

(b) Stormwater Master Plan. Developer will submit a Stormwater Master Plan ("**Stormwater Master Plan**") with each Basis of Design Report. Before Port or any City Agency is required to review any Improvement Plan Submittal following the first Basis of Design Report, SFPUC (through its General Manager) must review and approve the final Stormwater Master Plan submitted by Developer. SFPUC shall diligently and expeditiously review and approve the Stormwater Master Plan (or any subsequent revisions thereto).

(c) SFPUC Approval of Master Utilities Plans. Developer must submit final Master Utility Plans prior to submitting a Basis of Design Report. Before Port or any City Agency is required to review any Improvement Plan Submittal following the first Basis of Design Report, SFPUC (through its General Manager) must review and approve the final Master Utilities Plans submitted by Developer. SFPUC shall diligently and expeditiously review and approve the Master Utilities Plans (or any subsequent revisions thereto).

(d) SFPUC Review of Improvement Plans. The Permitting Agency will not issue any Construction Permit for Horizontal Improvements that include SFPUC Utility Infrastructure or SFPUC Utility-Related Mitigation Measures unless SFPUC has reviewed and commented on applicable Improvement Plans for compliance with SFPUC requirements consistent with the Governing Rules, including the Infrastructure Plan and Master Utility Plans, in accordance with procedures governing Improvement Plans in Article 4 hereof.

(e) Public Power. 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 28-Acre Site. SFPUC will work with the Developer to provide temporary construction and permanent electric services pursuant to its Rules and Regulations for Electric Service.

(f) Cooperation. The Permitting Agency, Developer, and Vertical Developers, as applicable, will work collaboratively with each Other City Agency to ensure that SFPUC Utility Infrastructure and SFPUC Utility-Related Mitigation Measures are discussed as early in the review process as possible and that the Port, Public Works, and the SFPUC act in concert with respect to these matters.

4.13. Role of SFFD. The following shall apply to Fire Safety Infrastructure.

(a) Prior SFFD Review. The Permitting Agency will not issue any Construction Permit for Horizontal Improvements that include or should include future Fire Safety Infrastructure unless the SFFD has previously reviewed and approved applicable Improvement Plans for compliance with SFFD requirements in accordance with procedures governing Improvement Plans in Article 4 hereof. Neither Public Works nor the Port shall approve any Construction Documents that include plans and specifications for Fire Safety Infrastructure without the SFFD Fire Chief's, or Chief's designee's, prior approval.

(b) Cooperation. The Permitting Agency, Developer, and Vertical Developers, as applicable, will work collaboratively with SFFD to ensure that Fire Safety Infrastructure is discussed as early in the review process as possible and that Public Works, the Port, and SFFD act in concert with respect to these matters.

5. PROCESS FOR REVIEW AND APPROVAL OF SUBDIVISION MAPS

5.1. Subdivision Process. The Subdivision Map Act, the Subdivision Code, and the Subdivision Regulations shall govern the Subdivision Map process. Attachment D attached hereto describes Developer's proposed mapping process for the Project. Attachment D is a draft for discussion purposes only.

6. OTHER COORDINATION

6.1. Intentionally Omitted.

6.2. Role of Horizontal Improvements Project Coordinator. Developer and the Port may agree to utilize a third-party professional (the "**Project Coordinator**") to coordinate with Developer and the Port to fulfill efficiently, expeditiously and with due diligence their respective obligations under this ICA. The Project Coordinator's scope of work includes but is not limited to facilitation of permit applications including plan review and revisions, providing recommendations for acceptance of parks and open space, providing recommendations on the issuance of the Port's Determination of Completion in accordance with the DDA and pursuant to the Schedule of Performance, and facilitation of acquisition and reimbursement under the Acquisition Agreement. The Port shall contract with the Project Coordinator, and may include associated actual costs incurred as part of Port Costs, on the conditions listed below.

6.3. Annual Review. At least 60 days before retaining or renewing the contract of any Project Coordinator, the Port, and Developer will meet and confer about the identity, cost, duration, and scope of work of the third-party professional to ensure that contracted services are used in an efficient manner and avoid redundancies.

6.4. Contract Terms. Contracts with the Project Coordinator: (i) will, unless agreed otherwise by the Port with Developer Consent, specify a maximum annual fee for the scope of work, subject to modification if work on Developer submittals exceeds the anticipated scope of work; (ii) may be for any term to which the Port and the Project Coordinator agree; (iii) must provide for an annual review of contracted services; and (iv) must be terminable upon notice.

6.5. Termination. Developer or the Port may request the termination of the Project Coordinator's contract by delivering a written statement of the basis for its request to the other Party. Before the Port will be obligated to terminate the Project Coordinator's contract, Developer and the Port must meet and confer on whether a revised scope of work would address the issues adequately and, if not, whether implementing procedures for securing a contract with a satisfactory replacement Project Coordinator is appropriate. If the contract is terminated, Developer and the Port will meet and confer to revise the timelines for Port and Other City Agencies' review and processing of Developer submittals under this ICA in light of available staffing.

6.6. Access to Other City Property. If necessary for the Project, each Other City Agency agrees to license temporarily any property under its jurisdiction to Developer on City standard and commercially reasonable terms. Developer access will be deemed necessary if it

authorizes Developer to investigate adjacent environmental conditions, undertake environmental response programs, undertake Mitigation Measures, construct Horizontal Improvements upon, or otherwise use the property to implement the Governing Rules. Licenses will include indemnification and security provisions in keeping with the City's standard.

7. DEFAULTS AND REMEDIES.

7.1. Meet and Confer. Before a City Agency delivers a notice under Section 7.2 (Notice of Default) below, the concerned City Agencies (including the Port) will provide notice of the alleged default and the steps needed to resolve it. The concerned City Agencies must attempt to resolve the dispute within 10 days of the date of such initial notice.

7.2. Notice of Default. Any concerned City Agency may deliver a notice to any Other City Agency alleging a default under this ICA if not resolved within the 10-day period under Section 7.1 (Meet and Confer) above. The notice of default must state with reasonable specificity the nature of the alleged default, the provision(s) under which the default is claimed to arise, and the manner in which the default may be cured.

7.3. Cure. The defaulting City Agency must cure the default within 30 days after the notice is delivered.

7.4. Consequences of Default.

(a) No Cost Recovery. A defaulting City Party will not be entitled to recover any of its costs from the date the notice under Section 7.2 (Notice of Default) above is delivered until the default is cured.

(b) Developer Action. The affected Developer Party may file an action to obtain a remedy for the default, including specific performance by the City Agency. Nothing in this Section requires an affected Developer Party to postpone instituting an injunctive proceeding if it believes in good faith that postponement will cause it irreparable harm.

(c) ICA Remains in Effect. The Parties acknowledge that termination is not a remedy under this ICA.

7.5. No Monetary Damages.

(a) No Interagency Damages. Except with respect to Section 3.6 (Cost Recovery) above, the Parties have determined that monetary damages are inappropriate and that it would be extremely difficult and impractical to fix or determine the actual damages to a Party as a result of any default and that equitable remedies, including specific performance, but not damages are the appropriate remedies for enforcement of all other provisions of this ICA. The Parties would not have entered into this ICA if it created liability to any other Party for damages under or with respect to implementing this ICA.

(b) Covenant and Waiver. The Parties have agreed that no City Agency will be liable in damages to any other City Agency, and each City Agency covenants not to sue for or claim any damages against any other City Agency and expressly waives its right to do so: (a) for any default; or (b) arising from or connected with any dispute,

controversy, or issue regarding the application, interpretation, or effect of this ICA. Developer's corresponding covenant and waiver are in Developer's Consent to this ICA.

(c) Developer's Statutory Rights. Nothing in this ICA limits a Developer Party's rights or remedies under any applicable Regulatory Requirement governing the application, review, processing, or permitting of Improvements, including the Permit Streamlining Act (Cal. Gov't Code §§ 65920 et seq.).

7.6. Attorneys' Fees. In event of any dispute or any legal action or other dispute resolution mechanism to enforce or interpret any provision of this ICA, each Party will bear its own attorneys' fees and costs, whether or not one Party prevails.

7.7. Developer Breach. If a Developer Party commits an Event of Default or is in Material Breach of its obligations under the DDA or other Transaction Document, including failure to pay Other City Costs or Port Costs (following expiration of any notice and cure periods), any City and Port obligations under this ICA with respect to the defaulting Developer Party will be suspended and will not be reinstated until the Developer Party cures the applicable Event of Default or Material Breach. But an Event of Default or a Material Breach by a Developer Party under the DDA will not relieve the City or the Port of any obligation under this ICA that arose before the Event of Default or Material Breach (except with respect to terminated portions of the DDA), or that relates to the Developer Party's obligations under the DDA or to any other Developer Party. This Section does not limit any other Port rights or remedies under the DDA, or any other City rights or remedies under the DA or applicable Regulatory Requirements.

8. GENERAL PROVISIONS.

The following apply to this ICA in addition to the provisions in the DDA Appendix Part A.

8.1. Notices. Notices given under this ICA are governed by *DDA App ¶ A.5 (Notices)*.

(a) Addresses for Notice. Addresses for notices given under this ICA are listed below and in the Consents. Developer and any City Agency may change its notice address by giving notice of the change in the manner provided above at least 10 days before the effective date of the change.

Address for City:

Office of Economic and Workforce Development
City and County of San Francisco
City Hall, Room 448
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Attn: Implementation Director

Telephone No.: (415)554-5395
Facsimile No.: (415) 554-4565
Email: Robin.Havens@sfgov.org

With a copy to:	San Francisco Public Works City Hall Room 348 San Francisco, California 94102 Attn: Director Telephone No.: (415) 554-6940 Email: dpw@sfdpw.org
Address for Port:	Port of San Francisco Pier 1 San Francisco, California 94111 Attn: Chief Harbor Engineer Telephone No.: (415) 274-0570 Facsimile No.: (415) 544-1770 Email: Rod.Iwashita@sfport.com
With a copy to (for matters affecting Transportation Infrastructure or Transportation-related Mitigation Measures only):	San Francisco Municipal Transportation Agency One South Van Ness Avenue 7th Floor San Francisco, California 94103 Attn: Director Telephone No.: (415) 701-4720 Facsimile No.: (415) 701-4339 Email: Ed.Reiskin@sfmta.com
With a copy to (for matters affecting Utility Infrastructure or Utility-related Mitigation Measures only):	San Francisco Public Utilities Commission 525 Golden Gate Avenue San Francisco, California 94102 Attn: General Manager Telephone No.: (415) 554-1600 Facsimile No.: (415) 554-3161

With a copy to:

Office of the City Attorney
Port of San Francisco
Pier 1
San Francisco, CA 94111

Attn: Port General Counsel

Telephone No.: (415) 274-0486
Facsimile No.: (415) 274-0494
Email: Eileen.malley@sfcityatty.org

Office of the City Attorney
City Hall, Room 234
1 Carlton B. Goodlett Place
San Francisco, CA 94102

Attn: Public Works General Counsel

Telephone No.: (415) 554-6761
Facsimile No.: (415) 554-4763
Email: Austin.yang@sfcityatty.org

Address for Developer:

FC Pier 70, LLC

FC Pier 70, LLC
949 Hope Street, Suite 200
Los Angeles, California 90015
Attention: Mr. Kevin Ratner

Facsimile: (213) 488-0039
Email: kevinratner@forestcity.net

(b) Courtesy Copies. Until the Port has issued a Certificate of Completion for all Horizontal Improvements for the Project, the Parties agree to provide courtesy copies to Developer on behalf of all Developer Parties of any notices that either the any City Agency gives to any other City Agency under Section 7.2 or 8.2(c) of this ICA at the same time and in the same manner as provided above, at the addresses listed below. Failure to give Developer a copy of any notice given under this Section will not affect the validity or effective date of the notice.

8.2. Amendments to ICA, Infrastructure Plan and Transportation Program.

(a) Writing Required. This ICA may be amended only by a written instrument executed by the Other City Parties and the Port, with the consent of an authorized representative of Developer, which may not be unreasonably withheld, conditioned, or delayed.

(b) City Authority. The Mayor and the Port Director are authorized consistent with a Developer request, or if not a Developer requested amendment subject to obtaining the Developer's prior written consent, to consent to any amendment to this ICA after consultation with the directors or general managers of any affected City Agencies, subject to the following:

(c) Required Consents for ICA Changes. The Mayor and the Port Director must obtain the written consent of any City Agency that is a signatory or consenting party to this ICA to the extent that such change materially affects the applicable City Agency's obligations or property. Subject to the required consents listed below in this Subsection, the determination as to whether any proposed amendment is material will be made in accordance with Section 8.2(d) below. More specifically:

(i) Public Works must give its prior written approval to any substantive ICA amendment affecting Public ROWs or the processing of Subdivision Maps.

(ii) SFMTA must give its prior written approval to any substantive ICA amendment affecting Transportation Infrastructure or Transportation-Related Mitigation Measures. For the avoidance of doubt, SFMTA must give its prior approval to any material amendments to the Infrastructure Plan that affect Transportation Infrastructure and any material amendments to the Transportation Program.

(iii) SFPUC must give its prior written approval to any ICA amendment affecting SFPUC Utility Infrastructure or Utility-Related Mitigation Measures.

(iv) SFFD must give its prior written approval to any substantive ICA amendment affecting Fire Safety Infrastructure.

(d) Material Amendments. Any ICA change that would materially: (A) increase the risk of a negative impact on the City's General Fund, as determined on behalf of the Mayor by the Controller; (B) materially increase a City Agency's obligations, or materially lessen the primary benefits to the City, as determined by the Mayor; or (C) have a negative impact on City property, as determined by the City Engineer, will be deemed a material amendment and will require approval by the Port Commission, the Mayor and the affected Other City Agencies consenting to this ICA as to matters within their respective exclusive jurisdiction.

(e) Infrastructure Plan and Transportation Program Amendments. Amendments to the Infrastructure Plan and Transportation Program will be processed and approved in accordance with Sections 8.2(a), (b) and (c) above.

(f) Minor Deviations.

(i) Improvements Plans. Minor deviations in a set of Improvement Plans from the Governing Rules, including the Infrastructure Plan and Master Utility Plans may be approved by the Permitting Agency with exclusive jurisdiction over the affected plan, with the consent of any Other affected City Agency, provided the deviation will not affect the overall system, its

configuration and performance, is otherwise compatible with the intent of the Infrastructure Plan and does not otherwise qualify for treatment as a material plan amendment under Section 8.2(d) above.

(ii) Review Schedule. Requests for approval of minor deviations will be reviewed as part of and within the same review time frames as the applicable set of improvement plans.

8.3. Invalidity.

(a) Invalid Provision. If a final court order finds any provision of this ICA invalid or inapplicable to any Person or circumstance, then the invalid or inapplicable provision will not affect any other provision of this ICA or its application to any other Person or circumstance, and the remaining portions of this ICA will continue in full force and effect.

(b) Countervailing Law. If any applicable State or federal law prevents or precludes compliance with any material provision of this ICA, the Parties agree to modify, amend, or suspend this ICA to the extent necessary to comply with law in a manner that preserves to the greatest extent possible the intended benefits of this ICA to each of the Parties and to Developer.

(c) Right to Terminate. A Party may terminate this ICA on notice to the other Parties if this ICA as amended or suspended under Section 8.3(a) (Invalid Provision) or (b) (Countervailing Law) above would: (i) be unreasonable or grossly inequitable under all of the circumstances or would frustrate this ICA's fundamental purposes; or (ii) deprive the City or the Port of the substantial benefits derived from this ICA or make performance unreasonably difficult or expensive. Following termination, the Parties, Developer, and Developer Parties will have no further rights or obligations under this ICA.

8.4. Successors and Assigns; Third-Party Beneficiary. This ICA is for the benefit of and binds the City's and the Port's respective successors and assigns. Developer and Developer Parties are intended third-party beneficiaries of this ICA. Except for Developer and Developer Parties, this ICA is for the exclusive benefit of the Parties and not for the benefit of any other person and may not be deemed to have conferred any rights, express or implied, upon any other person.

8.5. Further Assurances. The Port and the City each agree to take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents necessary or appropriate to achieve the purposes of this ICA.

8.6. Attachments. The attachments listed below are incorporated into and are a part of this ICA.

ICA Definitions Appendix

Developer's Consent

Consent of San Francisco Municipal Transportation Agency

Consent of San Francisco Public Utilities Commission

ICA Attachment A:	Infrastructure Plan
ICA Attachment B:	Basis of Design Report (Draft – For Discussion Purposes Only)
ICA Attachment C:	Developer's Deferred Infrastructure Concept (Draft – For Discussion Purposes Only)
ICA Attachment D:	Developer's Proposed Pier 70 Mapping Process (Draft – For Discussion Purposes Only)

[Remainder of page intentionally left blank.]

This ICA was executed and delivered as of the last date set forth below.

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Mark Farrell
Mayor
Date: _____

By: _____
Angela Calvillo
Clerk of the Board
Date: _____

By: _____
Ben Rosenfield
Controller
Date: _____

By: _____
Naomi Kelly
City Administrator
Date: _____

By: _____
Mohammed Nuru
Director of Public Works
Date: _____

Authorized by Board Resolution No. 403-17.

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Austin M. Yang
Deputy City Attorney

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. 17-48.

APPROVED AS TO FORM:
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City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

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Mayor
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Date: 11/09/2017

By:_____
Angela Calvillo
Clerk of the Board

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Date: 5/17/2017

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Deputy City Attorney

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: May 2, 2018

Authorized by Port Resolution No. 17-48.

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
for Joanne Sakai
Deputy City Attorney

ICA DEFINITIONS APPENDIX

"**28-Acre Site**" is an approximately 28-acre area located in the southeast corner of Pier 70 with the legal description and site plan shown in **DDA Exh A1** (Legal Description), **DDA Exh A2** (Site Plan), **DA Exh A** (Legal Description and Site Plan).

"**Acceptance and Maintenance Memorandum of Agreement**" is defined in Section 4.6(c) herein.

"**Acquiring Agency**" means the City Agency (the Port, SFPUC, or Public Works) that will acquire Horizontal Improvements in accordance with the Transaction Documents and Existing City Laws and Standards.

"**Acquisition Agreement**" means the Acquisition and Reimbursement Agreement between Developer and the Port in the form of **FP Exh A** that lists Horizontal Improvements that Acquiring Agencies will purchase from Developer, establishes the Acquisition Prices of Horizontal Improvements, and provides forms and procedures for Developer to request inspection of and payment for Horizontal Improvements.

"**Administrative Delay**" means an Excusable Delay caused when:

(i) a Regulatory Agency fails to act on a Developer request or application within a reasonable time under its standard practices or as otherwise specified in this ICA, the Development Agreement, or the DDA; or

(ii) an appeal body or court determines that a Regulatory Agency's act or failure to act on an application was improper following a challenge by Developer or a Vertical Developer Affiliate; or

(iii) for any matter that requires the execution and delivery of a Vertical DDA or Parcel Lease (*i.e.*, for the Arts Building and Historic Buildings 2 and 12 under **DDA § 7.11** (Historic Building 2) and **§7.14** (Historic Buildings 12 and 21), Developer has shown a good faith willingness to enter into the applicable agreement substantially in the forms attached to the DDA and in accordance with all other terms and conditions, but Port has delayed or failed to proceed with the execution and delivery of the applicable Vertical DDA or Parcel Lease.

*"**Administrative Delay**" **excludes** any delay caused by Developer's failure to meet any Outside Date due to its failure to submit timely all required and requested information supporting a request or application.*

"**Administrative Fee**" means:

(i) a City fee imposed citywide or portwide in effect and payable when a developer submits an application for any Regulatory 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 Regulatory Approval; and

(ii) the amount 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 Regulatory Approvals required under the Governing Rules.

*"**Administrative Fee**" excludes (1) any Impact Fee or Exaction; (2) Port Costs; and (3) Other City Costs.*

"**Affiliate**" when used in reference to a specified person, means any other person that directly or through intermediaries Controls, is Controlled by, or is under Common Control with the specified person.

"**Affordable Housing Parcel**" means a Development Parcel on which 100% affordable housing might be constructed under the Affordable Housing Plan, anticipated to be Parcel C1B, Parcel C2A and Parcel K South.

"**Appendix**" means the Appendix attached to the DDA, consisting of Appendix Part A: Standard Provisions and Rules of Interpretation; and Part B: Glossary of Defined Terms.

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

"**Basis of Design Report**" is a type of Improvement Plan referenced in Section 4.4(d)(ii) that will be generally in the form attached as ICA Attachment B.

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

"**CEQA Findings**" means findings adopted under CEQA Laws in connection with the Project Approvals.

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

"**CEQA Laws**" means CEQA, the CEQA Guidelines and the CEQA Procedures.

"**Chief Harbor Engineer**" means the Port's Deputy Director, Engineering, or his designee.

"**City**" means the City and County of San Francisco, California, a municipal corporation organized as a charter city under the California Constitution.

"**City Agency**" 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 Engineer**" means the person designated by the Director of Public Works pursuant to the Administrative Code.

"**City Party**" means the City, including the Port and Other City Agencies, and their respective Agents, including commissioners, supervisors, and other elected and appointed officials.

"**citywide**" 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 Law.

"**Commence Construction**" or "**Commencement of Construction**" means the start of substantial physical construction as part of a sustained and continuous construction plan.

"**Component**" as defined in the CFD Law means:

(i) for a Horizontal Improvement with an estimated cost of over $1 million, a discrete portion or phase that may be financed whether or not the Component is capable of serviceable use; or

(ii) for a Horizontal Improvement with an estimated cost of $1 million or less, a discrete portion or phase that may be financed when the Component is capable of serviceable use.

"**Consolidated Response Date**" is defined in Section 4.4(h) herein.

"**Construction Permits**" means:

(iii) for Horizontal Improvements, any permit that Developer must obtain from the Port or Other City Agencies before Commencement of Construction at the 28-Acre Site; and

(iv) for Vertical Improvements, building permits or site permits and addenda.

"**Controller**" means the Controller of the City and County of San Francisco.

"**Conveyance Agreement**" or "**Conveyance Agreements**" as the case may be, means a Vertical DDA, Parcel Lease, grant deed, quitclaim deed or any implementing documents (such as recorded covenants) used to convey Development Parcels to Vertical Developers under the DDA.

"**DA Ordinance**" means Ordinance No. 224-17 adopting the Development Agreement, incorporating by reference the CEQA Findings, public trust findings, and General Plan Consistency Findings for the 28-Acre Site Project, waiving specified provisions of the Municipal Code, and authorizing the Planning Director to execute the Development Agreement on behalf of the City.

"**DDA**" is an acronym for the Disposition and Development Agreement between the Port and Developer specifying the terms and conditions for Developer's master development of the 28-Acre Site.

"**DDA Reference Date**" means the date on which the DDA is fully executed.

"**DDA Term**" means the period beginning on the DDA Reference Date and ending when the DDA expires by its own terms or by early termination.

"**Deferred Infrastructure**" means the Horizontal Improvements included with the Permit Set approved in compliance with all Applicable Laws that may be constructed, completed, and accepted in connection with the associated Vertical Improvements but separate from the rest of the other Horizontal Improvements approved in the Permit Set, but only upon agreement and approval by the Permitting Agency and an Acquiring Agency and in compliance with all Applicable Laws. Any approved Deferred Infrastructure other than Public Spaces in Park Parcels must be constructed and completed no later than the associated Vertical Improvements. Any approved Deferred Infrastructure for Public Spaces in Park Parcels will be completed no later than the applicable Outside Date for Completion in the Schedule of Performance.

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

"**Developer**" means FC Pier 70, LLC, a Delaware limited liability, and its successors.

"**Developer Mitigation Measure**" means any Mitigation Measure in the MMRP (**DDA Exh A6**) that is identified as the responsibility of the "project sponsors" that arises in connection with Developer's obligations under DDA 14.8(a), or otherwise undertaken by Developer at its expense.

"**Developer Party**" means Developer and its direct and indirect partners, members, shareholders, officers, and Affiliates, individually or collectively.

"**Development Agreement**" means the agreement that the City entered into with Developer under Chapter 56 and the Development Agreement Statute between specifying the entitlement rights that the City agreed to vest in Developer for development of the 28-Acre Site by adoption of the DA Ordinance.

"**Development Parcel**" means a buildable parcel in the SUD, including each Option Parcel.

"**Director of Public Works**" means the Director of San Francisco Public Works.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the United States Department of Labor, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the Water Board, the California Division of Occupational Safety & Health, Department of Industrial Relations, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, SFFD, SFPUC, the Port, and any Other Regulator now or later authorized to regulate Hazardous Materials.

"**Event of Default**" for purposes of the DDA means a Breaching Party's failure to cure a noticed breach within the cure period specified in **DDA § 11.2** (Events of Default by Developer), **DDA § 11.3** (Events of Default by the Port), **DA § 9.2** (Events of Default), or any other Transaction Document, as applicable in the context. "**Event of Default**" for purposes of the DA is defined in **§ 9.2.**

"**Exaction**" means any requirement to construct improvements for a public purpose, dedicate a real property interest, or other burden 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.*

"**Existing City Laws and Standards**" as defined in **DA § 5.2(a)** (Agreement to Follow) means:

(i) the Project Approvals;

(ii) the Transaction Documents; and

(iii) all other applicable City Laws in effect on the DA Ordinance Effective, subject to **DA § 5.3** (Changes to Existing City Laws and Standards).

"**FC Project Area**" means the 28-Acre Site and 20th Street, 21st Street, and 22nd Street east of Illinois Street, and areas outside of the 28-Acre Site where the Developer will construct Improvements serving the 28-Acre Site.

"**Final Map**" means a final Subdivision Map meeting the requirements of the Subdivision Code, Subdivision Regulations (subject to such exceptions or revisions as may be approved by the Director of Public Works under the San Francisco Subdivision Code) and the Map Act.

"**First Submittal**" means the set of Improvement Plans submitted after the Basis of Design Report and before the Second Submittal under ICA § 4.4(d(ii).

"**Future Approval**" means any Regulatory Approval adopted or issued after the DA Ordinance Effective Date that is required to implement the 28-Acre Site Project, including Regulatory Approvals required to begin Site Preparation or construction of Improvements in the FC Project Area.

"**General Plan**" means goals, policies, and programs for the future physical development of the City, as adopted by the Planning Commission and approved by the Board of Supervisors, taking into consideration social, economic, and environmental factors.

"**General Plan Consistency Findings**" means findings made by the Planning Commission by Resolution No. 19978 that the 28-Acre Site 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.

"**Governing Rules**" means all of the following:

(i) the Project Approvals,

(ii) the Transaction Documents,

(iii) all applicable Existing City Laws, and

(iv) Changes to Existing City Laws and Standards, to the extent permitted under the Development Agreement.

"**Historic Building**" 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.

"**Historic Tax Credits**" means tax credits that may be obtained under the Historic Preservation Tax Incentives Program jointly administered by the National Park Service and the State Historic Preservation Office, codified at Tax Code section 47.

"**Horizontal Improvements**" means:

(i) capital facilities and infrastructure and their constituent Components that Developer or a Transferee builds or installs in or to serve the FC Project Area or for other public purposes, including Site Preparation, Shoreline Improvements, Public Spaces, Public ROWs, and Utility Infrastructure; and

(ii) Deferred Infrastructure.

*"**Horizontal Improvements**" **excludes** Vertical Improvements.*

"**ICA**" means this Memorandum of Understanding Regarding Interagency Cooperation.

"**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 in-lieu fees.

> *"**Impact Fee**" **excludes** any Administrative Fee, school district fee, or federal, state, or regional fee, tax, special tax, or assessment. as defined in the Development Agreement.*

"**Improvement**" means any physical change required or permitted to be made to property, including Horizontal Improvements and Vertical Improvements.

"**Improvement Plans**" as defined in Section 4.4(d)(ii) of this ICA.

"**Improvement Plan Submittal**" is defined in Section 4.4(d) herein.

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

"**Inspection Request**" means Developer's written request that the Chief Harbor Engineer or City Engineer, as applicable, arrange for the applicable Acquiring Agency to inspect Horizontal Improvements or Components for compliance with Governing Rules and City Laws.

"**Land Use Plan**" means the Land Use Concept Plan shown in *D4D Fig 2.1.1* and attached to the DDA as **DDA Exh A4-1**.

"**Map Act**" means the Subdivision Map Act of California (Calif. Gov't Code §§ 66410-66499.37).

"**Master Lease**" means a lease for the Master Lease Premises in the form of **DDA Exh B10** that allows Developer to take possession of the described premises and construct Horizontal Improvements on portions of the 28-Acre Site under the DDA.

"**Master Utilities Plan(s)**" means any of the following plans for Utility Infrastructure, which will be deemed incorporated into the Infrastructure Plan when approved by the SFPUC:

(i) Low Pressure Water Master Plan;

(ii) Non-Potable Water System Master Plan;

(iii) Grading and Combined Sewer System Master Plan;

(iv) Dry Utilities Joint Trench Master Plan; and

(v) Master Electrical Infrastructure Plan.

"**Mitigation Measure**" means any measure identified in the MMRP required to minimize or eliminate material adverse environmental impacts of the 28-Acre Site Project and any additional measures necessary to mitigate adverse environmental impacts that are identified through the CEQA process for any Future Approval.

"**MMRP**" is an acronym for the Mitigation Monitoring and Reporting Program that the Planning Commission adopted by Motion No. 19977, the Port Commission adopted by Resolution

No. 17-43, SFMTA adopted by Resolution No. 170905-112 and SFPUC adopted by Resolution 17-0209.

"**Option**" means development rights granted to Developer for Option Parcels under the DDA.

"**Option Parcel**" means a Development Parcel for which Developer has an Option under **DDA art. 7** (Parcel Conveyances), which Developer will exercise through a Vertical Developer Affiliate.

"**Other Acquiring Agency**" means an Acquiring Agency other than the Port.

"**Other City Agency**" means a City Agency other than the Port.

"**Other City Costs**" means costs that Other City Agencies incur to perform their obligations under this ICA, the Development Agreement, and the Tax Allocation MOU to implement or defend actions arising from the 28-Acre Site 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, and including any defense costs as set forth in Section 4 of the Developer's Consent attached to this ICA.

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

"**Other City Requirements**" means ordinances and policies described in **DDA Exh A7** and approved plans to implement City and Port ordinances and policies, including those attached to the DDA at **DDA Exh Tab B**.

"**Other Regulator**" 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.

"**Parcel Lease**" means a contract in the form of **DDA Exh D3** by which the Port will convey a leasehold interest in an Option Parcel to a Vertical Developer.

"**Park Parcel Improvement Plans**" means a Permit Set for Park Parcels approved by the Port in accordance with Section 4.4(d)(iii) hereof.

"**Park Parcel**" means any of the Park Parcels identified in the Land Use Plan as Parcel OS1, Parcel SC1, Parcel SC2, Parcel WP1, Parcel WTP, or Parcel WP2.

"**Parties**" or "**Party**" means Developer and City, and their respective successors under this ICA.

"**Permit Set**" is defined in Section 4.4(d)(ii) herein.

"**Permitting Agency**" means the City Agency, typically the Port for all Public Spaces and the Department of Public Works with respect to the work in the Public ROW and for other facilities, responsible for issuing permits for construction and installation of Horizontal Improvements, and for all actions to be taken thereunder, including coordination of plan reviews, approvals, construction inspections, and for determining whether improvements are complete all in accordance with this ICA.

"**person**" means any individual, corporation (including any business trust), limited liability entity, partnership, trust, joint venture, or any other entity or association, or governmental or other political subdivision or agency.

"**Phase**" means one of the integrated stages of horizontal and vertical development of the 28-Acre Site as shown in the Phasing Plan, subject to revision under **DDA art 3** (Phase Approval).

"**Phase Area**" means the Development Parcels and other land at the 28-Acre Site that are to be developed in a Phase.

"**Phase Improvements**" means Horizontal Improvements that are to be constructed in a Phase, including Deferred Infrastructure.

"**Phasing Plan**" 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).

"**Planning**" 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 Commission**" means the San Francisco Planning Commission.

"**Planning Department**" means staff of the City's Planning Department.

"**Planning Director**" means the City's Director of Planning.

"**Planning Code**" means the Planning Code of the City and County of San Francisco, California.

"**Port Commission**" or "**Port**" means the San Francisco Port Commission, acting by resolution or by delegation of its authority to the Port Director and other Port staff.

"**Port Costs**" means costs that the Port incurs to perform its obligations to Developer and otherwise implement the DDA and Master Lease, including staff costs on a time and materials basis, third-party costs, and costs to administer the Pier 70 CFDs, the Pier 70 IFDs and the IRFD to the extent not paid by Public Financing Sources.

> ***"Port Costs" excludes*** *Other City Costs, Advances of Land Proceeds, and Port Capital Advances.*

"**Port Director**" means the Executive Director of the Port.

"**portwide**" means any matter applicable to all real property under the jurisdiction of the Port Commission.

"**Project**" means the development of the FC Project Area in accordance with the DDA, subject to the Governing Rules.

"**Project Approval**" means: [

(i) a Regulatory Approval by a City Agency that is necessary to entitle the 28-Acre Site Project and permit Developer to begin Site Preparation and construction of Horizontal Improvements, including those shown on **DDA Exh A3** and **DA Exh B**; and

(ii) as specified in **DA § 5.1(d)** (Future Approvals), includes all Future Approvals for the Project.

"**Project Coordinator**" is defined in Section 6.2 herein.

"**Public Improvement Agreement**" means:

(i) an agreement between the City and Developer under the Map Act and Subdivision Code for the completion of required Horizontal Improvements that are not complete when the Final Map is approved; or

(ii) a similar agreement between the City and Developer for the completion of the Developer Construction Obligations (such as a Street Excavation Improvement Agreement or other Port-issued construction agreement for Park Parcels).

"**Public ROWs**" 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 Space**" means Horizontal Improvements for public enjoyment, such as public parks, public recreational facilities, public access, open space, and other public amenities, some of which may be rooftop facilities.

"**Public Works**" means the San Francisco Public Works Department.

"**Reference Date**" is defined in the Preamble to this ICA.

"**Regulatory Agency**" means a City Agency or any Other Regulator.

"**Regulatory Approval**" means any motion, resolution, ordinance, permit, approval, license, registration, permit, utility services agreement, Final Map, or other action, agreement, or entitlement required or issued by any Regulatory Agency with jurisdiction over any portion of the 28-Acre Site, as finally approved.

"**Regulatory Requirement**" means laws or policies applicable to the development, occupancy, and use of the 28-Acre Site Project, subject to the Port's authority as trustee under the Burton Act as amended by AB 418, including:

(i) Existing City Laws and Standards and other Regulatory Approvals;

(ii) Changes to Existing City Laws and Standards to the extent permitted under the DA;

(iii) Impact Fees and Exactions applicable to the 28-Acre Site Project under the DA; and

(iv) Environmental Laws, and

(v) the Other City Requirements.

"**Second Submittal**" means the packet of Improvement Plans submitted for review and approval after the First Submittal and before the Permit Set.

"**Secretary's Standards**" means the *Standards for Rehabilitation of Historic Properties* (for historic tax credit projects) and related Guidelines published in the Secretary of the Interior's Standards for the Treatment of Historic Properties.

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

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

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

"**SFPUC Utility-Related Infrastructure**" means Utility Infrastructure that will be under SFPUC jurisdiction when accepted.

"**Site Preparation**" means physical work to prepare and secure the 28-Acre Site 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 under the AHP.

"**Site Preparation Plans**" is defined in Section 4.4(d)(i) herein.

"**SOP Compliance Determination**" means the Chief Harbor Engineer's approval of an SOP Compliance Request in accordance with **DDA § 15.7** (SOP Compliance), which will be confirmed in a recordable document in the form of **DDA Exh B9-1**.

"**State Lands Commission**" means the California State Lands Commission.

"**Stormwater Master Plan**" is defined in Section 4.12(b) herein.

"**Street Excavation Improvement Agreement**" means an agreement between Developer and the City, executed before a Final Map is recorded, that allows construction of Horizontal Improvements to begin.

"**Subdivision Code**" means the San Francisco Subdivision Code and Subdivision Regulations, subject to applicable amendments or procedures in the DA Ordinance and Development Agreement.

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

"**Subdivision Regulations**" means subdivision regulations adopted by Public Works from time to time.

"**SUD**" is an acronym for the Pier 70 Special Use District established by Planning Code section 249.79, which incorporates the Design for Development, and related amendments to the City's Zoning Map with zoning and other land use controls applicable to the 28-Acre Site and adjoining parcels, approved by Ordinance No. 225-17.

"**Transaction Document**" means any of the following, individually or collectively:

(i) the DDA, including the Financing Plan, the Appendix, and all attached exhibits, schedules, and implementing agreements and plans;

(ii) each Vertical DDA and associated documents by which the Port conveys a Development Parcel;

(iii) each Assignment and Assumption Agreement governing a Transferee's rights and obligations for the Project;

(iv) this ICA;

(v) the Development Agreement;

(vi) the Master Lease;

(vii) any Guaranty given to the Port as Adequate Security; and

(viii) any other agreement governing the Parties' respective rights and obligations with respect to the development or operation of any portion of the 28-Acre Site.

"**Transferee**" means any person to which Developer Transfers its rights and corresponding obligations relating to a Phase, Horizontal Improvements, or horizontal development as permitted under **DDA art. 6** (Transfers).

> *"**Transferee**" excludes any Vertical Developer, Lender, or successor to either except to the extent of assumed horizontal development rights or obligations (not including Deferred Infrastructure) as permitted under the DDA.*

"**Transportation Infrastructure**" means Improvements and technology necessary for transportation and public transit services on or serving the SUD, including vehicular traffic and transit signaling and signs; parking meters and other parking control devices; bicycle parking facilities; bicycle rental/sharing facilities; protected bikeways; bus boarding islands or bulb-outs and shelters; pedestrian traffic controls; overhead traction power cabling and supports, street lighting supports; wayside control and communication systems and devices; electrical substations, junction boxes, underground conduit and duct banks; transit stops; and street and curb striping.

"**Transportation Program**" means **DDA Exh B5**, which contains strategies that Developer is required to implement to address movement in and around the 28-Acre Site.

"**Transportation-Related Mitigation Measure**" means any Mitigation Measure, including the TDM Plan, that SFMTA is responsible for monitoring or implementing.

"**Utility Infrastructure**" means Horizontal Improvements for systems that provide services to the FC Project Area, including subsurface systems for power, stormwater, sewer, domestic water, recycled water, AWSS, and above-ground facilities, such as streetlights, stormwater controls, and switchgear.

> *"**Utility Infrastructure**" excludes telecommunications infrastructure and any privately owned utility improvements.*

"**VDDA**" or "**Vertical DDA**" means agreement between the Port and a Vertical Developer governing vertical development of a Development Parcel in the form of **DDA Exh D2**.

"**Vertical Developer**" means a person that acquires Parcel K North or a Development Parcel from the Port under a Vertical DDA for the development of Vertical Improvements.

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DEVELOPER'S CONSENT

1. Consent and Agreement. By signing below, Developer's representative, on behalf of Developer and Developer Parties: (a) consents to the ICA, understanding that the City and the Port have entered into it for the express collective benefit of the City, the Port, Developer and Developer Parties; (b) agrees that the ICA and this Developer Consent will be binding on the Developer Parties and each Transferee and Vertical Developer and further agrees to cause each Transferee and Vertical Developer to accept the ICA and this Developer's Consent as provided in the DDA; and (c) represents that execution of this Consent is authorized and that the person signing this Consent is authorized to sign this consent on behalf of Developer,

2. Acknowledgements. Developer acknowledges the following.

(a) Developer is an intended third-party beneficiary of the ICA.

(b) On recordation, the ICA and this Developer's Consent will apply to, and burden and benefit, the City, the Port, Developer, and each Transferee and Vertical Developer whether or not the ICA or Developer's Consent is specifically referenced in any Assignment Agreement or Conveyance Agreement.

(c) City and Port will conduct their review in accordance with the ICA and City and Port review will be limited to compliance with the Governing Rules and be in accordance with the Development Agreement.

(d) Developer will be solely responsible for compliance with applicable state and federal laws.

(e) The ICA does not eliminate or alter the process or approval requirements under applicable provisions of state or federal law or the regulations of other Regulatory Agencies with respect to any development at the 28-Acre Site.

(f) Developer will bear all costs associated with applying for and obtaining any Regulatory Approval. Developer, at no cost to the City that is not a City Cost or a Port Cost, will be solely responsible for complying with any conditions or restrictions imposed on the construction of Improvements under a Regulatory Approval, except those imposed on construction of Vertical Improvements on the Affordable Housing Parcels. Developer will have the right to appeal or contest any condition imposed under a Regulatory Approval in any manner permitted by law, but only with the prior consent of the affected City Agency if the City is a co-applicant or co-permittee. If Developer can demonstrate to the City's reasonable satisfaction that an appeal would not affect the City's responsibility or liability for any conditions that are or could be the responsibility of any City Agency, the City will not unreasonably withhold or delay its consent. In all other cases, an affected City Agency will have the right to give or withhold its consent in its sole discretion. Developer must pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Regulatory Approval.

(g) The Port Director may require Developer to provide the Port Commission, the Planning Commission, the Board of Supervisors, and any other Regulatory Agency with periodic updates on the Project.

(h) Developer acknowledges that for City Agencies to meet the time periods under the ICA, for review of Construction Documents, inspections, for making completion determinations, for acceptance of Horizontal Improvements (and portions or components thereof), for release of security, in accordance with the ICA, Developer will, as described in the ICA, (i) provide advance notices of Improvement Plan submittals (including advance notice of any requests for exceptions or deviations from Subdivision Regulations, Infrastructure Plans or any other Governing Rules) and advance notice of requests for inspections; (ii) provide with each Improvement Plan resubmittal a redline showing portions of the Improvement Plans that have been revised, and a chart identifying each comment, the response to that comment, and where it is shown on the Improvement Plans; (iii) ensure that each Improvement Plan Submittal is complete and internally consistent; (iv) provide a complete package of project completion and/or acceptance requirements; and (v) participate in regularly (at least quarterly) status and coordination meetings with the Permitting Agency (and other affected City Agencies, as applicable).

3. No Authority to Bind City. Developer understands that it must not agree to conditions or restrictions to any Regulatory Approval from a Regulatory Agency that could create: (a) any obligations on the part of any City Agency that is required to be a co-applicant or co-permittee, unless the obligation is specifically the City's responsibility under the ICA, the Transaction Documents, or the Regulatory Requirements; or (b) any restrictions on City property, unless in each instance the affected City Agency in its reasonable discretion has previously approved the conditions or restrictions in accordance with this Section.

4. Reimbursement of Other City Costs. In consideration of Developer's benefits under the ICA, Developer agrees to reimburse Other City Costs incurred for each consenting City Agency's performance under the ICA under and subject to *DDA art. 19 (Port and City Costs)*, *Development Agreement § 4.4 (Payment of Planning Costs)*, and ICA Section 3.6 (Cost Recovery).

5. Indemnity. Developer acknowledges that Developer has an obligation to indemnity the City, the Port, and Other City Agencies as Indemnified Parties under *DDA art. 9 (Site Condition and Indemnities)* and the City under *DA § 4.5 (Indemnification of City)*.

6. Limitations on Liability.

(a) Generally. Developer, on behalf of itself and the other Developer Parties, understands and agrees that no commissioners, members, officers, agents, or employees of the City, the Port, or any Other City Agency (or any of their successors or assigns) will be personally liable to the other or to any other person, nor will any officers, directors, shareholders, agents, partners, members, or employees of any Developer Party (or of its successors or assigns) be personally liable to the City, the Port, or any Other City Agency, or any other person in the event of any default or breach of the ICA by the City, the Port, or any Other City Agency or of this Developer's Consent or for any amount that may become due or any obligations under the ICA or this Developer's Consent.

(b) No Release of Existing Liability. This provision will not release obligations of a person that is otherwise liable, such as the general partner of a partnership that is liable for the obligation or the guarantor of an obligation.

(c) No Municipal Liability for Damages. Neither the Port nor any Other City Agency will be liable to any Developer Party for damages under the ICA for any reason. Developer covenants not to sue for or claim any damages against any City Agency and expressly waives its right to do so.

[Remainder of page intentionally left blank]

DEVELOPER:

FC PIER 70, LLC, A DELAWARE LIMITED LIABILITY COMPANY

By:_____
Robert G. O'Brien,
Vice President

Date: _____

Addresses for courtesy copies of notices:

FC Pier 70, LLC,
949 Hope Street, Suite 200
Los Angeles, California 90015
Attention: Mr. Kevin Ratner

Facsimile: (213) 488-0039

Email: kevinratner@forestcity.net

With a copy to:

Forest City Realty Trust, Inc.
127 Public Square, Suite 3200
Cleveland, Ohio 44114

Attention: General Counsel

And to:

Gibson Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105

Attn: Neil H. Sekhri, Esq.

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CONSENT OF

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

1. Execution. By executing this Consent, the persons named below confirm the following.

(a) The SFMTA Board of Directors consented to the matters listed below after considering at a duly noticed public hearing the Infrastructure Plan and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, for the Project.

(b) SFMTA does not intend to limit, waive, or delegate in any way its exclusive authority under Article VIIIA of the Charter.

2. Matters Covered. SFMTA agrees to the following.

(a) The Project Approvals, including the Infrastructure Plan, the Design for Development, the Transportation Program and the MMRP will govern matters under SFMTA jurisdiction, including Transportation Infrastructure and Transportation-Related Mitigation Measures. SFMTA staff will:

(i) participate in pre-submittal conferences and meet-and-confer meetings to facilitate the Project;

(ii) review and comment on Improvement Plans relating to matters under its exclusive authority under the Charter and provide comments in accordance with the ICA;

(iii) inspect Transportation Infrastructure within 21 days after receiving a copy of an Inspection Notice from the Director of Public Works and to provide its approval and acceptance or a punch list of items to be corrected within 5 days after performing its inspection in accordance with the ICA.

(b) SFMTA will review and approve the Transportation Infrastructure described in the Infrastructure Plan (*e.g.,* traffic control devices (primarily signs, traffic signals, striping in the Public ROW), bike racks, transit bulbs and shelters, and meters in City-accepted Public ROWs), subject to Developer satisfying SFMTA requirements and the Transportation-Related Mitigation Measures for safety, design, construction, testing, performance, training, documentation, warranties, and guarantees that are consistent with the applicable Regulatory Requirements.

(c) SFMTA's approvals will be consistent with the DDA, the Infrastructure Plan, the Design for Development, the Master Utilities Plan for streets, the Transportation Program, Regulatory Requirements, and its prior approvals. SFMTA will not withhold its consent unreasonably to proposed changes for Transportation Infrastructure, including the Infrastructure Plan, the Design for Development, the Master Utilities Plan for streets or the Transportation Program if the changes meet the requirements of this Consent.

(d) SFMTA will procure, accept, operate, and maintain transit systems described in the Infrastructure Plan and the Transportation-Related Mitigation Measures subject to identification of resources, appropriation of funds, and other fiscal and

operational considerations, including the level of municipal railway service provided citywide.

(e) SFMTA will satisfy the construction requirements that are assigned to SFMTA in the Infrastructure Plan and Transportation-Related Mitigation Measures, as applicable, subject to identification of resources, appropriation of funds, and other fiscal and operational considerations, including the level of MUNI service provided citywide.

(f) SFMTA will cooperate with Developer in phasing any required SFMTA construction to the extent practicable given fiscal and operational considerations.

(g) SFMTA will license temporarily any property under its jurisdiction to Developer on commercially reasonable terms, including indemnification and security provisions in keeping with the City's standards. Developer access will be deemed necessary if it authorizes Developer to investigate adjacent environmental conditions, undertake environmental response programs, undertake Mitigation Measures, construct Horizontal Improvements upon, or otherwise use the property to implement Regulatory Requirements.

(h) In order to provide Developer with sufficient advance notice to install any required bus bulbs, SFMTA will provide Developer with at least 12-months' notice prior to commencing any bus service route that enters the 28-Acre Site.

3. Cost Recovery. SFMTA acknowledges that Developer has agreed to reimburse Other City Costs, including SFMTA's costs, to implement the matters described above, including reimbursement for review of Improvement Plans, on the following conditions.

(a) SFMTA must deliver to the Port a quarterly statement of SFMTA costs in time to allow the Port to prepare a combined quarterly statement of Other City Costs within six months after the date the costs are incurred.

(b) SFMTA will have no right to recover any SFMTA cost that is not included in a quarterly statement within 12 months after it was incurred.

(c) Developer will make aggregate reimbursement payments directly to the Port, which will be responsible for disbursing the funds to SFMTA without incurring liability for paying SFMTA amounts owing that Developer withholds.

4. Notice Address. SFMTA's address for notices given under the ICA is:

San Francisco Municipal Transportation Agency
One South Van Ness Avenue
7th Floor
San Francisco, California 94103

Attn: Director

Telephone No.: (415) 701-4720
Facsimile No.: (415) 701-4339
Email: Ed.Reiskin@sfmta.com

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

By: _____
Ed Reiskin
Executive Director
Date: 5.7.18

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Susan Cleveland-Knowles
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors Resolution No. 170905-112

Adopted: September 25, 2017

Attest:

_____
Secretary, SFMTA Board of Directors

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CONSENT OF

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

1. Execution. By executing this Consent, the person named below confirms that SFPUC has reviewed the ICA, and after considering the Infrastructure Plan, Development Agreement and Utility-Related Mitigation Measures at a duly noticed public hearing, took the following actions.

(a) SFPUC authorized its General Manager to enter into the ICA and consent to the ICA and Infrastructure Plan as they relate to matters under SFPUC jurisdiction, for SFPUC Utility Infrastructure and Utility-Related Mitigation Measures.

(b) 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. The 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 Governing Electric Service.

(c) SFPUC agreed to accept, operate, and maintain SFPUC Utility Infrastructure, subject to appropriation and to Developer satisfying SFPUC requirements for construction, warranties and guarantees, operations and maintenance manuals, testing, and training, consistent with approved improvement plans. 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.

(d) SFPUC delegated to the SFPUC General Manager or his designee any future SFPUC approvals under the ICA, subject to applicable Regulatory Requirements including the Charter.

2. No Waiver. By authorizing this SFPUC Consent, the SFPUC does not intend to in any way limit SFPUC's exclusive authority under Article VIIIB of the Charter.

3. Cost Recovery. The SFPUC acknowledges that Developer has agreed to reimburse Other City Costs, including the SFPUC's costs, to implement the matters described above, on the following conditions.

(a) The SFPUC shall provide the Director of Public Works with a quarterly statement of the SFPUC's costs in time to allow Public Works to provide Developer with a combined quarterly statement of Other City Costs within 6 months after the date the costs are incurred.

(b) The SFPUC will have no right to recover any SFPUC cost that is not included in a quarterly statement within 12 months after it was incurred.

(c) Developer will make aggregate reimbursement payments directly to the Port, which will be responsible for disbursing the funds to the SFPUC without incurring liability for paying SFPUC amounts owing that Developer withholds.

4. Notice Address. SFPUC's address for notices given under the ICA is: 525 Golden Gate Avenue, San Francisco, California 94102.

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

By: _____
Harlan Kelly, Jr.
General Manager

Date: _____

Authorized by SFPUC Resolution No. 17-0209

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Francesca Gessner
SFPUC General Counsel

EXHIBIT I
ASSESSOR REQUESTED INFORMATION

Document Outline

Assessable/actionable events for Assessor ("ASR")

1. Initial land sale/ transfer of title
2. Mapping
3. Tax certificates
4. Lien date new construction
5. Completed new construction
6. Final ownership changes/sales to users

Assessable/Actionable Event information

1. Initial land sale / transfer of title

a. Assessable: any recorded change in ownership or ground lease/changes to existing ground lease

b. Information needed:

i. Deeds (transfer maps do not convey title for ASR purposes) or any other type of document transferring title (e.g. Patents, Assignments, Quitclaim Deeds, etc.

ii. Subdivision maps and how they correspond to recorded deeds

iii. Appraisal for transfers from government entities or non-arm's length transactions

c. Timing: at the time of recording for a basis of calculating transfer tax **[or include applicable timeline from Assessor]**

2. Mapping [Include if event is applicable.]

a. Justification/Purpose: ASR needs this information to reserve new block and lot numbers for the project.

b. Information needed:

i. Tentative maps that overlay future parcel changes and project phases (with current APNs and future reserved APNs)

ii. Federal/state maps if applicable

iii. Timeline of subdivision activity and how the current parcels will be divided/combined/adjusted in each phase of the subdivision

iv. Initial subdivision maps and what deeds they correspond to

c. Timing:

i. Upon request to reserve APNs for new project **[or include applicable timeline from Assessor]**

3. Tax certificates (Treasurer & Tax Collector's Office provides to ASR) [Include if event is applicable.]

a. Justification: ASR needs this information to (1) ensure that any outstanding changes in ownership have been recorded and any completed or anticipated new construction has been valued and (2) to generate a new assessed value for TTX to use for tax pre-payment purposes.

b. Information needed:

i. Pre-final map

ii. TTX Form A and B (depending on how complicated the development is)

c. Timing: whenever requested by the taxpayer, ASR has four weeks to review and determine new value **[or include applicable timeline from Assessor]**

4. Lien date new construction

a. Justification/Purpose: ASR needs this information to accurately assess the value of new construction in progress as of January 1st as required by the Revenue & Taxation Code.

b. Information needed:

i. The date construction started and the estimated completion date. If construction was in progress on January 1st, the percentage of construction completed.

ii. A complete list of all the construction and/or demolition costs incurred as of this date, including direct and indirect costs and entrepreneurial profit. (sample provided for reference See Attachment 1)

iii. Copies of any leases signed.

iv. A detailed description of all work to be completed or any changes to the work description.

v. A copy of the pro forma, feasibility study or appraisal used to support the building of this project.

vi. Copies of all application for building permits.

vii. Certified copy of the lender's disbursement of funds.

viii. Cost not funded by construction loan.

ix. Details on any current or anticipated efforts to sell the property, if applicable.

x. Any additional information, if not referenced above, that would influence the market value of the property.

xi. Name, mailing address, phone number and e-mail of person(s) to contact regarding additional questions and inspection of property.

c. Timing:

i. By January 31st of each year the construction is in progress **[or include applicable timeline from Assessor.]**

5. Completed new construction

a. Justification: ASR needs this information to accurately assess the value of completed new construction as of the date of completion as required by the Revenue & Taxation Code.

b. Information needed:

i. All property types

A. The date construction started and completion date.

B. A detailed description of all work completed (attach referenced floor plans, etc.)

C. Copies of all applications for building permits.

D. A complete list of all construction costs (see Attachment 1) including direct, indirect costs and anticipated or actual entrepreneurial profit.

E. Detailed information on costs not funded by construction loans.

F. A copy of the pro forma, feasibility study or appraisal used to support the building of this project.

G. Details on any current or anticipated efforts to sell the property, if applicable

H. Copies of any leases signed or currently in negotiation.

I. A copy of the land lease or other document that indicates the value of the land, if applicable.

J. Projected or actual income and expense statement and a schedule of asking rent, if applicable. For actual statements, please provide the source document.

K. Certified copy of the lender's disbursement of funds.

L. Details on parking stall rents and any miscellaneous income.

M. Any appraisal completed.

N. Any additional information, if not referenced above, that would influence the market value of the property.

O. Name, address, phone number and email of person to contact for questions/arrange for a site inspection.

ii. Office

A. Rent roll showing net rentable areas by floor and area leased by

each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

B. The gross and net rentable areas of the building.

C. Projected or actual sales volume of the property.

D. A copy of any existing operating agreements, if applicable.

E. A copy of the feasibility study.

F. A copy of the stacking plan, if applicable.

G. XFactor or BOMA recalculation of square footage, if applicable.

H. If the construction project includes a parking garage:

a. How will it be operated (i.e. leased to a second party for contract rent or net income to the owner)?

b. What is the anticipated number of spaces and vehicle capacity (with valet services if applicable)?

c. What will be the monthly fee for parking?

iii. Retail

A. Rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

B. The gross and net rentable areas of the building.

C. Details on parking stall rents and any miscellaneous income.

D. Projected or actual sales volume of the property.

E. A copy of the operating agreement signed with the mall owner, if applicable.

iv. Apartments

A. Tenant Rent Roll (which may redact names of residential tenants) for residential and commercial units that includes the unit number, unit type (number of beds/baths), number of rooms, market rate or BMR unit, occupancy, square footage, contract rental rate, date lease signed, market rental rate, other fees collected – parking, storage, pet. Overall parking spaces, any upgrades, floor and view premiums (if applicable). Please provide a rent roll as of the certificate of occupancy and/or when stabilized occupancy is achieved.

B. A finish schedule.

C. Total square footage of improvements allocated by use (residential, retail, common area, parking, etc.). Area (sq. ft.) of each floor including basement, mezzanine, penthouse, etc.

v. Condos

A. The Parcel Split/Condo Conversion Questionnaire (See Attachment 2, Excel is strongly preferred.)

B. For any units retained by the developer (i.e. parking, storage, retail, etc.), please provide copies of any signed leases, details on any leases in negotiation or proposed, or a summary of asking rents. Include a tenant rent roll (which may redact any personal information of residential tenants), projected or actual income and expense statements, and net rentable area of each retained unit.

C. Condo map/plan (if applicable) – required for us to split a new condo project or condo conversion

c. Timing: within 60 days upon completion of construction for each project phase [or include applicable timeline from Assessor.]

6. Final ownership changes/sales to users

a. Event: any recorded change in ownership or new lease/changes to existing lease

b. Information needed:

i. All property types

A. Information about the sale:

a. The purchase agreement and closing statement

b. Identify the broker or agent on the sale

c. Original list price

d. Days on market

B. Details and terms of financing the property.

C. Details on any anticipated deferred maintenance costs or capital expenditures anticipated by buyer at the time of the sale (i.e. renovations, major repairs, seismic retrofitting, and asbestos abatement) and a detailed schedule of when the work is to be completed, if known by seller.

D. If the purchase price was not considered market value for the property, an explanation of why.

E. Detailed anticipated income and expense operating statements of the new owner at time of purchase and/or acquisition and the prior two (2) years.

F. Copies of any leases or lease abstracts, amendments or renewals, including free rent and tenant improvement allowances agreed to.

G. Marketing materials and/or asking rents to lease vacant space as of the transfer date

H. Any anticipated changes in use.

ii. Office

A. A copy of the Offering Memorandum distributed by selling agent.

B. Copies of any appraisal prepared for purchase financing.

C. The investor's pro-forma and market rent assumptions generated by Argus investment analysis or other format (Excel preferred).

D. A rent roll (excluding any personal information of residential tenants) as of the change in ownership date showing; all tenants with corresponding suite numbers, suite sizes (sf), monthly or annual rent, date and terms of leases, scheduled rent escalations and any vacant rentable space (Excel format preferred).

E. Indicate if any lease expense agreements are other than full-service gross with a base year (FSG).

F. If vacancy is above 10%, provide historical vacancy or occupancy ratios (on an annual or bi-annual basis) over the previous three (3) years.

G. A detailed annual income and expense summary for the year of sale and the prior two (2) years. If historical income and operating statements were not provided by the seller, please substitute your operating budget as of the purchase date (Excel format preferred).

iii. Retail

A. Any cash flow analysis, pro forma worksheets or investment analysis in the acquisition of the property.

B. Any appraisal prepared for the acquisition or financing of the subject property.

C. Details on the financing involved for the purchase and/or acquisition of the subject property.

D. Current rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

E. The gross and net rentable areas of the building.

F. At the time of transfer, indicate the amount of net rentable vacant space, identify its location within the building and indicate the asking rental rates.

G. The anticipated sales volume of the property.

iv. Apartments

A. Rent roll as of the change in ownership date, showing the list of all tenants (excluding any personal information of

residential tenants) with monthly rent and move-in date. For retail tenants, please provide copies of the lease(s), including any amendments or renewals (Excel format preferred).

B. The anticipated rental rates for any vacant units.

C. The anticipated operating income and expenses at the time of purchase/change in ownership. If available, provide the operating income and expenses statements for the two (2) years preceding change in ownership (Excel format preferred).

D. Details on any miscellaneous income (parking, laundry, storage, etc.)

E. A copy of any appraisal prepared for any purpose (financing, insurance, investment) within two (2) years of the event date.

F. A description of each unit; number of rooms, bedrooms, bathrooms, furnished or unfurnished.

G. The current rent roll showing net rentable areas by floor and area leased by each retail tenant (if any); the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances. If there are no leasable areas of the property, so state.

H. Copy of the sale agreement with detailed itemizations of all real property and business personal property components included in the sale.

v. Single Family Homes/Condos

A. No additional information needed, recorded deed is sufficient

c. Timing: within 60 days of a change to the fee owner of the property **[or include applicable timeline from Assessor.]**

Attachments

1. **In Progress and Completed New Construction Cost Report template**

2. **Parcel Split/Condo Conversion Questionnaire**

VDDA EXHIBIT K
ATTACHMENT 1

City and County of San Francisco
San Francisco Assessor-Recorder

Carmen Chu
Assessor-Recorder

Please check one of the following:

A.P.N. _____
(Block) (Lot)

O **As of Lien Date**_____

Address _____

O **As of Date of Completion** _____

COST REPORT

DESCRIPTION	Contract Amount	% Complete	Total Cost Completed To Date	Reported Previously	This Report
DIRECT COST: (Includes)					
Building Permits/Fees					
Contractor's Profit and Overhead					
Equipment Used in Construction					
Labor Used in Construction					
Material, Products and Equipment					
Performance Bonds					
SUBTOTAL DIRECT COST					
TENANT IMPROVEMENT:					
Owners Cost					
Tenants Cost					
SUBTOTAL TENANT IMPROVEMENT					
INDIRECT COST: (Includes)					
Architect Fees					
Construction Insurance					
Contingency					
Engineer Fees					
Financing Fees					
Interest Expense					
Lease-Up Costs					
Legal/Professional Fees					
Marketing/Sales Costs					
Other Misc. Fees					
Project Administration/Management					
Property Taxes					
SUBTOTAL INDIRECT COST					
LAND COST					
ENTREPRENEURIAL PROFIT					
TOTAL PROJECT COST					

Print Name and Title _____ Phone _____

Signature _____ Date _____

CONFIDENTIAL

VDDA EXHIBIT K -- ATTACHMENT 2

Parcel Split/Condo Conversion Questionnaire

Orig. Address:
Project Name:
Parent Lot:
Child Lots:
Year Built:
Date Completed:

Key/Field Description

Developer Retained Unit

USE:	Residential, Retail, Office, Parking Condo
TOTAL AREA:	Total GLA or square footage of unit.
DECK AREA:	Total square footage of deck or balcony.
STORIES:	Number of stories in the unit (1, 2, 3)
CONDO FLOOR:	Floor number where the condo sits (1, 2, 3, etc.)
TOTAL ROOMS:	Total number of rooms (2, 3, 4, etc...)
BEDROOMS:	Number of bedrooms (1, 2, 3, etc.)
BATHROOMS:	Number of full baths (1, 2, 3)
HALF BATHS:	Number of half baths (1, 2, 3)
FIREPLACES:	Number of fireplaces (1, 2)
KITCHEN QLTY:	Custom, Economy, Modern
PARKING SPACES:	Number of assigned parking spaces (1,2)
PARKING TYPE:	Lift, Tandem, Valet, Single
VIEW TYPE:	GG Bridge, Bay Bridge, Water, City, Buildings, None
SALE DATE:	Date sold. Please note if the unit will not be sold, but will be retained by the developer.
SALE PRICE:	Sales price. Please note asking price if not sold yet or if the unit will be retained by the developer.
BLDE?:	Yes for residential units to be sold, No for developer retained units

BLOCK	LOT	APN	STREET ADDRESS	UNIT NO.	USE	YEAR BUILT	TOTAL AREA	DECK AREA	STORIES	CONDO FLOOR	TOTAL ROOMS	BEDROOMS	BATHROOMS	HALF BATHROOMS	FIREPLACES	KITCH QLTY	PARKING SPACES	PARKING TYPE	VIEW TYPE	SALE DATE	SALE PRICE	BLDE?

SCHEDULE 22.1 HAZARDOUS MATERIALS INDEMNIFICATION

22.1(b) Hazardous Materials Indemnification.

(i) In addition to its obligations under Section 22.1(a) and subject to Section 22.1(c), Vertical Developer, for itself and on behalf of its Agents, agrees to Indemnify the City Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(1) any Hazardous Material Condition existing or occurring during the Term;

(2) any Handling or Release of Hazardous Materials in, on, under, or around the Property during the Term;

(3) without limiting Vertical Developer's Indemnification obligations in this Section 22.1(b), any Handling or Release of Hazardous Materials by Vertical Developer or its Agents in, on, under, or around the Property to perform the PKN Horizontal Improvements ("**PKN Improvement Area**") at any time prior to acceptance of such PKN Horizontal Improvements; or

(4) without limiting Vertical Developer's Indemnification obligations in Section 22.1(b)(i) (2) or 22.1(b)(i) (3), any Handling or Release of Hazardous Materials by Vertical Developer or its Agents outside of the Property, but in, on, under, or around other Port property, or City property that is adjacent to the Property but only if such Losses or Hazardous Material Claims arise directly or indirectly out of Vertical Developer's or its Agents' acts, omissions or negligence ; or

(5) any Exacerbation of any Hazardous Material Condition; or

(6) failure by Vertical Developer or any of its Agents or Invitees, or tenants, renters or condo owners or their respective Invitees (collectively, "**Related Third Parties**") to comply with the Pier 70 Risk Management Plan; or

(7) claims by Vertical Developer or any Related Third Party for exposure from and after the Closing Date to Hazardous Materials in, on, under, or around the Property.

Without limiting Vertical Developer's Indemnity obligations with respect to the Property or the PKN Improvement Area, Port agrees that Vertical Developer's Indemnity for Claims relating to "other Port property" or "other City property" as set forth above in Subsection 22.1(b)(4) applies only if such Claims arise directly or indirectly out of Vertical Developer's, Related Third Party's, or Invitee's acts, omissions or negligence.

(ii) "**Losses**" under Section 22.1(b) includes: (i) actual costs incurred in connection with any Investigation or Remediation required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (iii) actual natural resource damages; and (iv) Attorneys' Fees and Costs. If Port actually incurs any Losses, Vertical Developer must reimburse Port for Port's Losses, plus interest at the Interest Rate from the date Port delivers a payment demand and reasonable supporting evidence of such Loss to Vertical Developer until paid; such reimbursement will be made within fifteen (15) business days after receipt of Port's payment demand and reasonable supporting evidence.

(iii) Vertical Developer understands and agrees that its Indemnification obligations to the City Parties and the State Lands Indemnified Parties under this Section 22.1(b), subject to Section 22.1(c), arises upon the earlier to occur of:

(1) discovery by Vertical Developer or its Agents of any such Hazardous Materials in, on, under, or around the Property and the PKN Improvement Area;

(2) the Handling or Release of Hazardous Materials in, on, under, or around the Property and the PKN Improvement Area;

(3) the Exacerbation of any Hazardous Material Condition, or

(4) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of Losses.

22.1(c) Exclusions from Indemnifications, Waivers and Releases.

(i) Nothing in this Schedule 22.1(b) relieves the City Parties or the State Lands Indemnified Parties from liability, nor will the Indemnification obligations of Vertical Developer set forth in Sections 17.2 and 22 of the VDDA extend to Losses:

(1) to the extent caused by the gross negligence or willful misconduct of the City Parties; or

(2) for third parties' claims for exposure to Hazardous Materials from the Property prior to the Closing Date; or

(3) without limiting Vertical Developer's Indemnification obligations under Sections 22.1(b)(i)(3), 22.1(b)(i)(4), 22.1(b)(i)(6), or 22.1(b)(i)(7) of this Schedule 22.1, and to the extent the applicable Loss was not caused by the failure of Vertical Developer or any of its Agents or Invitees, or Related Third Parties to comply with the Pier 70 Risk Management Plan, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the PKN Improvement Area after the Acceptance Date for the PKN Improvement Area; provided, however, the foregoing limitation on Vertical Developer's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Vertical Developer, its Agents;

(4) for the Release of Hazardous Materials in, on, under, or around the Property by third-parties who are not related in any manner to Vertical Developer (i.e. not Related Third Parties), unless such Release is directly or indirectly due to Vertical Developer's acts, omission, or negligence,.

(ii) If it is reasonable for a City Party or a State Lands Indemnified Party to assert that a claim for Indemnification under this Section 22.1(c) is subject to coverage by a pollution liability insurance policy, pursuant to which such City Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Vertical Developer in asserting a claim or claims under such insurance policy but without waiving any of its rights under this Section 22.1(c). Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Vertical Developer, the Indemnification obligations of Vertical Developer hereunder will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Vertical Developer pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Vertical Developer.

22.1(d) Additional Definitions.

"**Environmental Laws**" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and

groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Property, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this Agreement. "**Environmental Laws**" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened in writing, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the BAAQMD, the SFDPH, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"**Exacerbate**" or "**Exacerbating**" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission, it being understood that the mere discovery of Hazardous Materials does not cause "Exacerbation". "Exacerbate" also includes the disturbance, removal or generation of Hazardous Materials in the course of Vertical Developer's operations, Investigations, maintenance, repair, construction of PKN Project under this Agreement. "Exacerbate" also means failure to comply with the Pier 70 Risk Management Plan. "Exacerbation" has a correlative meaning.

"**Handle**" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "Handling" has a correlative meaning.

"**Hazardous Material Claim**" means any Environmental Regulatory Action or any claim made or threatened in writing by any third party against the City Parties or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Property or other Port property, the loss or restriction of the use or any amenity of the Property or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"**Hazardous Material Condition**" means the Release or Exacerbation, or threatened Release or Exacerbation of Hazardous Materials in, on, under, or around the Property or the environment, or from any vehicles Vertical Developer, its tenants, subtenants, or its Agents and Invitees use in, on, under, or about the Property.

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that

may be located in, on, under, or around all or any portion of the Property, any PKN Project or any portion of the site or the PKN Project or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under, or around the Property or the PKN Project.

"**Invitee**" means a person's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, vendors, suppliers, assignees, tenants and subtenants, any other person whose rights arise through them, and members of the general public present on any property under the person's possession and control.

"**Pier 70 Risk Management Plan**" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that have been or will be approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"**Pre-Existing Hazardous Material**" means a Hazardous Material in, on, under or around any portion of the Property that existed before Vertical Developer took possession of the Property.

"**Release**" means when used with respect to Hazardous Materials, any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"**Remediate**" or "Remediation" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or around the Property or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"**State Lands Indemnified Parties**" means the State of California, the California State Lands Commission, all of its heirs, legal representatives, successors and assigns, and all other Persons acting on its behalf.

SCHEDULE 20

FINANCING PROVISIONS

1.1. ***Mortgages***.

(1) **Right to Grant Mortgages**. Port acknowledges that Vertical Developer may from time to time grant a mortgage, deed of trust, pledge or other security instrument encumbering Vertical Developer's direct or indirect interest in the Property or any direct or indirect membership interest in Vertical Developer (each a "**Mortgage**"). The beneficiary of any such Mortgage, including, without limitation, any mezzanine lender, is referred to herein as a "**Lender**". Any Lender having a security interest in the Property or any direct or indirect interest in Vertical Developer shall have the rights set forth in this ***Schedule 20***.

(b) **Mortgages Subject to this Agreement**. With the exception of the rights expressly granted to Lenders in this ***Schedule 20***, the execution and delivery of a Mortgage will not give or be deemed to give a Lender any greater rights than those granted to Vertical Developer hereunder.

(c) **Transfer by Lenders**. A Lender may transfer or assign all or any part of or interest in any Mortgage without the consent of or notice to any Party; provided, however, that Port will have no obligations under this Agreement to a Lender unless Port is notified of such transfer or assignment. Furthermore, Port's receipt of notice of a Lender following Port's delivery of a notice or demand to Vertical Developer or to one or more Lenders under ***Section 1.4 of this Schedule 20*** (Lender's Obligations with Respect to the Property) will not result in an extension of any of the time periods in this ***Schedule 20*** including the cure periods specified in ***Section 1.5 of this Schedule 20*** (Provisions of Any Mortgage).

1.2. ***Copy of Notice of Default to Lender***.

(a) **Copy to Lender**. Whenever Port delivers any notice or demand to Vertical Developer for any breach or default by Vertical Developer in its obligations or covenants under this Agreement, Port will at the same time forward a copy of such notice or demand to each Lender that has previously made a written request to Port for a copy of any such notices in accordance with ***Section 1.2(b) of this Schedule 20*** (Notice from Lender to Port). A delay or failure by Port to provide such notice or demand to any Lender that has previously made a written request therefor will extend, by the number of days until notice is given, the time allowed to such Lender to cure.

(b) **Notice From Lender to Port**. Each Lender is entitled to receive notices in accordance with ***Section 1.2(a) of this Schedule 20*** (Copy to Lender) provided such Lender has delivered a notice to Port in substantially the following form:

> "The undersigned does hereby certify that it is a Lender, as such term is defined in that certain Vertical Disposition and Development Agreement entered into by and between the City and County of San Francisco, operating by and through the San Francisco Port Commission ("Port") and [insert name of Vertical Developer], as Vertical Developer (the "VDDA"), of Vertical Developer's interest in the property subject to the VDDA, a legal description of which is attached hereto as Exhibit A and made a

part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the VDDA to Vertical Developer by Port be sent to the undersigned at the following address: _____."

If Lender desires to have Port acknowledge receipt of Lender's name and address delivered to Port pursuant to this ***Section 1.2(b)***, then such request must be made in bold, underlined and in capitalized letters.

1.3. ***Lender's Option to Cure Defaults***.

(1) Before or after receiving any notice of failure to cure referred to in ***Section 1.2 of this Schedule 20*** (Copy of Notice of Default to Lender), each Lender will have the right (but not the obligation), at its option, to commence to cure or cause to be cured any Vertical Developer Default, within the same period afforded to Vertical Developer hereunder plus an additional period of (i) thirty (30) days with respect to a monetary Vertical Developer Default and (ii) sixty(60) days with respect to a non-monetary Vertical Developer Default that is susceptible of cure by such Lender without obtaining title to the applicable property subject to the applicable Mortgage or acquiring the ownership interests in Vertical Developer, as applicable; provided that if a non-monetary Vertical Developer Default is of such nature that it cannot reasonably be remedied within the time period provided and requires more than 60-days to cure, then so long as Lender has commenced a cure within such 60-day period the time period for cure will be extended during such time as Lender diligently and continuously pursues such cure, provided such period shall not, except in the case of Force Majeure, exceed 120 consecutive calendar days.

(2) If a non-monetary Vertical Developer Default cannot be cured by Lender without obtaining title to the Property, or applicable portion thereof, Port will refrain from exercising its right to terminate this Agreement and will permit the cure by a Lender of such Vertical Developer Default if, within the cure period set forth in ***Section 1.3(a) of this Schedule 20***: (i) such Lender notifies Port in writing that such Lender intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property or ownership interests, as applicable; (ii) such Lender commences foreclosure proceedings whether by non-judicial foreclosure, judicial foreclosure, by appointment of a receiver, or deed (or assignment) in lieu of foreclosure, within sixty (60) days after giving such notice, and diligently pursues such proceedings to completion; and (iii) after obtaining title, such Lender, subject to ***Section 1.4 of this Schedule 20*** (Lender's Obligations with Respect to the Property), diligently proceeds to cure those Vertical Developer Defaults that are susceptible of cure by such Lender. The period from the date Lender so notifies Port until a Lender acquires title to applicable property subject to the applicable Mortgage or some other party acquires such interest through foreclosure is herein called the "**Foreclosure Period**." During the Foreclosure Period, the Schedule of Performance set forth in Section 15.10 of the Agreement will be suspended.

(b) Nothing in this ***Schedule 20*** will preclude Port from exercising any rights or remedies under this Agreement against Vertical Developer (other than a termination of this Agreement) with respect to any other Vertical Developer Defaults during the Foreclosure Period.

(c) Notwithstanding the foregoing, no Lender will be required to cure any non-monetary Vertical Developer Default that is specific or personal to Vertical Developer which cannot be cured by Lender (by way of example and not limitation, Vertical Developer bankruptcy, or the failure to submit required information in the possession of Vertical Developer). Lender's acquisition of title to applicable property subject to the applicable Mortgage, or the completion of a foreclosure (or assignment in lieu thereof), as applicable, will be deemed to be a cure of such Vertical Developer Defaults specific or personal to Vertical

Developer. The foregoing will not excuse a Lender's failure to cure any continuing default that is curable by Lender.

(d) If a Lender is prohibited by any law, injunction, or any bankruptcy, insolvency or other judicial proceeding from commencing or prosecuting a foreclosure action, then the times specified for commencing or prosecuting such foreclosure action, as applicable, will be extended by each day of such prohibition.

1.4. ***Lender's Obligations with Respect to the Property***.

(a) **Rights and Obligations upon Lender Acquisition**. Except as set forth in this ***Schedule 20***, no Lender will have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to applicable property subject to the applicable Mortgage (referred to as "**Foreclosed Property**"). Except as otherwise provided herein (including, without limitation, ***Sections 1.4(b)—(d) of this Schedule 20***, a Lender (or its designee, successor or assign) or other winning bidder at a foreclosure sale (collectively, a "**Successor Owner**") that acquires title to any Foreclosed Property (a "**Lender Acquisition**") will take title subject to all of the terms and conditions of this Agreement to the extent applicable to the Foreclosed Property. Upon completion of a Lender Acquisition, Port will recognize the Successor Owner as Vertical Developer under this Agreement. Such recognition will be effective and self-operative without the execution of any further instruments; provided, upon request, at no cost to Port, Port will execute a written agreement recognizing Successor Owner. A Successor Owner, upon a Lender Acquisition, will be required promptly to cure all monetary defaults and all other ongoing defaults then reasonably susceptible of being cured by such Successor Owner to the extent not cured prior to completion of the Lender Acquisition.

(b) **Obligations of Lender Prior to Lender Acquisition**. Prior to a Lender Acquisition, Port will have no right to enforce any obligation under this Agreement against any Lender unless such Lender expressly assumes and agrees to be bound by this Agreement in a form reasonably approved in writing by Lender and Port, which form will be consistent with the terms of this Agreement (for the avoidance of doubt, the foregoing will not limit Port's rights and remedies against Vertical Developer notwithstanding any interest Lender may have in Vertical Developer or any right against any successor owner of the Property for a continuing default, as set forth in and subject to the limitations of this ***Schedule 20***). However, Lender agrees to comply during a Foreclosure Period with the payment of any Transfer Fees due Port pursuant to Section 14.3 of the VDDA or any Taxes due and payable by Vertical Developer or assessed against the Property.

(c) **Obligation to Construct PKN Horizontal Improvements**. Subject to ***Sections 1.4(d)*** (Obligation to Sell If Not Construct PKN Horizontal Improvements) and ***1.4(e)*** (Lender Agreement to Construct PKN Horizontal Improvements) ***of this Schedule 20***, any Lender who obtains title to Foreclosed Property through a Lender Acquisition or any other Successor Owner (other than such Lender) will be obligated to Construct the PKN Horizontal Improvements in accordance with this Agreement.

(d) **Obligation to Sell If Not Construct PKN Horizontal Improvements**. In the event that Lender acquires the Foreclosed Property through a Lender Acquisition and Lender chooses not to cause the Construction of PKN Horizontal Improvements, it will notify Port in writing of its election within one hundred twenty (120) days following the Lender Acquisition or promptly after Lender makes such election, and will thereafter use good faith

efforts to sell its interest with reasonable diligence to a purchaser that will be obligated to cause the Construction of PKN Horizontal Improvements to occur in accordance with this Agreement, but in any event Lender will use good faith efforts to cause such sale to occur within nine (9) months following Lender's written notice to Port of its election (the "**Sale Period**").

(e) **Lender Agreement to Construct PKN Horizontal Improvements**. If Lender fails to sell its interest in the Property within the Sale Period, such failure will not constitute a default hereunder but Lender will be obligated to cause the Construction of PKN Horizontal Improvements to the extent this Agreement obligates Vertical Developer to do so. In the event Lender agrees, or is deemed to have agreed, to cause the Construction of PKN Horizontal Improvements, (i) all such work will be performed in accordance with all the requirements set forth in this Agreement, (ii) Lender shall engage a qualified construction manager with at least ten (10) years' experience managing construction projects of a similar nature, and (iii) Lender shall confirm to Port in writing that its construction manager satisfies the foregoing requirement.

1.5. ***Provisions of Any Mortgage***. Each Mortgage must provide that Lender will during the term of this Agreement, (i) promptly provide Port by registered or certified mail a copy of any notice delivered by Lender to Vertical Developer of a borrower event of default (*i.e.*, following the expiration of all notice and cure periods) under the Mortgage, and (ii) give Port prior notice before Lender initiates any Mortgage foreclosure action with respect to the Property or the Project.

1.6. ***No Impairment of Mortgage***. No default by Vertical Developer under this Agreement will invalidate or defeat the lien of any Lender. Neither a breach of any obligation in a Mortgage, nor a foreclosure under any Mortgage will defeat, diminish, render invalid or unenforceable or otherwise impair Vertical Developer's rights or obligations under this Agreement or constitute, by itself, a default under this Agreement.

1.7. ***Multiple Mortgages***.

(a) If at any time there is more than one Mortgage constituting a lien on a single portion of the Property or any interest therein, the lien of Lender prior in time to all others (the "**Senior Lender**") will be vested with the rights under ***Sections 1.3*** (Lender's Option to Cure Defaults)***, 1.13*** (Consent of Lender), and ***1.4*** (Cooperation) ***of this Schedule 20*** to the exclusion of the holder of any other Mortgage except if the Senior Lender fails to exercise the rights set forth in ***Section 1.3*** (Lender's Option to Cure Defaults), then the holder of a junior Mortgage that has provided notice to Port in accordance with ***Section 1.2*** (Copy of Notice of Default to Lender) will succeed to the rights set forth in ***Section 1.3*** (Lender's Option to Cure Defaults), only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in ***Section 1.3*** (Lender's Option to Cure Defaults).

(b) A Senior Lender's failure to exercise its rights under ***Section 1.3*** (Lender's Option to Cure Defaults), ***Section 1.13*** (Consent of Lender) or ***Section 1.14*** (Cooperation) ***of this Schedule 20*** as applicable, or any delay in the response of any Lender to any notice by Port will not extend (i) any cure period or (ii) Vertical Developer's or any Lender's rights under this ***Schedule 20***. For purposes of this ***Section 1.7***, in the absence of an order of a court of competent jurisdiction that is served on Port, a title report prepared by a reputable title company licensed to do business in the State of California and having an office in the City, setting forth the order of

priorities of the liens of Mortgages on real property, may be relied upon by Port as conclusive evidence of priority.

1.8. ***Cured Defaults***. Port will accept performance by a Lender with the same force and effect as it performed by Vertical Developer. No such performance on behalf of Vertical Developer in and of itself will cause Lender to become a "mortgagee in possession" or otherwise cause it to be bound by or liable under this Agreement.

1.9. ***Limitation on Liability of Lender***. Notwithstanding anything herein to the contrary, no Lender will become liable under the provisions of this Agreement unless and until such time as it becomes the owner of some or any portion of the Property and then only for so long as it remains the owner of such fee interest and only with respect to the obligations arising during such period of ownership.

If a Lender becomes the owner of the Property, (i) except as set forth in ***Sections 1.4(c)*** (Obligation to Construct PKN Horizontal Improvements) and ***1.4(d)*** (Obligation to Sell if Not Construct PKN Horizontal Improvements) ***of this Schedule 20***, such Lender will be liable to Port for the obligations of Vertical Developer hereunder only to the extent such obligations arise during the period that such Lender remains the owner of the Property, and (ii) in no event will Lender have personal liability under this Agreement, as applicable, greater than Lender's interest in the Property, and Port will have no recourse against Lender's assets other than its interest herein or therein.

1.10. ***Intentionally Omitted.***

1.11. ***Nominee***. Any rights of a Lender under this ***Schedule 20*** (Financing Provisions), may be exercised by or through its nominee or designee (other than Vertical Developer) which is an Affiliate of Lender; provided, however, no Lender will acquire title to the Property through a nominee or designee which is not a Person otherwise permitted to become Vertical Developer hereunder; provided, further that a Lender may acquire title to the Property through a wholly owned (directly or indirectly) subsidiary of Lender.

1.12. ***Intentionally Omitted.***

1.13. ***Consent of Lender***. Port will not (i) modify this Agreement in a manner that amends any provision of this ***Schedule 20*** or otherwise amends the terms of this Agreement in a manner that creates a material adverse effect upon Senior Lender, or (ii) terminate or cancel this Agreement without Senior Lender's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any such modification, termination or cancellation of this Agreement without Senior Lender's consent will be effective against Senior Lender.

1.14. ***Cooperation***. Port, through its Executive Director, and Vertical Developer will cooperate in including in this Agreement by suitable written amendment or agreement from time to time any provision which may be reasonably requested by the Senior Lender and customarily included in such amendment or agreement to implement the provisions and intent of this ***Schedule 20*** provided, however, that any such amendment or agreement will not adversely affect in any material respect any of Port's rights and remedies under this Agreement.

1.15. ***Reliance***.

The provisions of this ***Schedule 20*** are for the benefit of the Lender and may be relied upon and shall be enforceable by the Lender.

1.16. ***Priority of Lender Protections***.

In the event of a conflict between a provision in this ***Schedule 20***, on the one hand, and any other provision of this Agreement, on the other hand, the provision set forth in this ***Schedule 20*** will control.

1.17. ***Insurance***. A standard mortgagee clause naming Lender as an insured may be added to any and all insurance policies required to be carried by Vertical Developer under the Agreement on condition that the insurance proceeds are to be applied in the manner specified in the Agreement and the Lender shall so provide; except that the Lender may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Vertical Developer pursuant to the provisions of the Agreement.

1.18. ***Estoppel Certificates***. At reasonable intervals, (a) Lender shall have the right to obtain estoppel certificates from Port stating whether the Agreement is in full force and effect, whether Vertical Developer is in default under any of the terms, covenants or conditions contained in the Agreement, and such other statements reasonably acceptable to Port and Lender, and (b) Port shall have the right to request estoppel certificates from Lender stating whether the Mortgage and related loan documents (collectively, the "**Loan Documents**"), if any, is in full force and effect, whether Vertical Developer is in default under any of the terms, covenants or conditions contained in the Loan Documents, and such other statements reasonably acceptable to Port and Lender.

SCHEDULE 14.3
In-Lieu Transfer Payment

Per Section 14.3, if the Vertical Developer has elected to operate the Vertical Project as a residential rental project, Vertical Developer shall make an In-Lieu Transfer Payment each year in which any residential Condominium Unit remains unsold following the expiration of the Unencumbered 10 Year Period, with is a period of 10 years from issuance of the first certificate of occupancy for the Vertical Project, as follows:

Beginning on the anniversary of the expiration date of the Unencumbered 10 Year Period, , Vertical Developer shall pay an In-Lieu Transfer Payment equal to the ratio of unsold residential Condominium Units to the total number of residential Condominium Units per the Final Subdivision Map, times the In-Lieu Transfer Payment for the applicable Year in the table below, with amounts for cross-over calendar years prorated based on the date of issuance of the first certificate of occupancy. Vertical Developer shall continue to pay an In-Lieu Transfer Payment on each anniversary date thereafter until the year in which all units have been sold. Each In-Lieu Transfer Payment shall be paid no later than 30 days after each TCO anniversary at which a payment is due.

EXAMPLE #1: Assume first certificate of occupancy is January 1, 2024, and the Final Subdivision Map provided that the Vertical Project has 250 residential Condominium Units. The 10th anniversary will be January 1, 2034. Assume at the end of the 10th year, January 1, 2035, there are 100 unsold units, equal to 40% of total units (100/250 = .4). The In-Lieu Transfer Payment will be 40% of $722,472 = $288,989.

EXAMPLE #2: Assume first certificate of occupancy is September 1, 2025, and the Final Subdivision Map provided that the Vertical Project has 260 residential Condomium Units. The 10th anniversary will be September 1, 2035. Assume at of the end of the 10th year, September 1, 2036, there are 156 unsold units, equal to 60% (156/260 = .6). The 60% will be applied to 4 months of 2035 (September through December) and 8 months of 2036 (January through August). The In-Lieu Transfer Payment will be 60% of ($744,146 X 4/12) + ($766,471 x 8/12)) = $455,418.

Year	In-Lieu Transfer Payment
2028	$ 605,059
2029	$ 623,211
2030	$ 641,907
2031	$ 661,164
2032	$ 680,999
2033	$ 701,429
2034	$ 722,472
2035	$ 744,146
2036	$ 766,471
2037	$ 789,465
2038	$ 813,149
2039	$ 837,543
2040	$ 862,670
2041	$ 888,550
2042	$ 915,206
2043	$ 942,662
2044	$ 970,942
2045	$ 1,000,071
2046	$ 1,030,073

SCHEDULE 14.3
In-Lieu Transfer Payment

2047	$	1,060,975
2048	$	1,092,804
2049	$	1,125,588
2050	$	1,159,356
2051	$	1,194,137
2052	$	1,229,961
2053	$	1,266,859
2054	$	1,304,865
2055	$	1,344,011
2056	$	1,384,332
2057	$	1,425,862
2058	$	1,468,637
2059	$	1,512,696
2060	$	1,558,077
2061	$	1,604,820
2062	$	1,652,964
2063	$	1,702,553
2064	$	1,753,630
2065	$	1,806,239
2066	$	1,860,426
2067	$	1,916,239
2068	$	1,973,726
2069	$	2,032,938
2070	$	2,093,926
2071	$	2,156,743
2072	$	2,221,446
2073	$	2,288,089
2074	$	2,356,732
2075	$	2,427,434
2076	$	2,500,257
2077	$	2,575,265
2078	$	2,652,522
2079	$	2,732,098
2080	$	2,814,061
2081	$	2,898,483
2082	$	2,985,437
2083	$	3,075,001
2084	$	3,167,251
2085	$	3,262,268
2086	$	3,360,136
2087	$	3,460,940
2088	$	3,564,768
2089	$	3,671,711
2090	$	3,781,863
2091	$	3,895,319
2092	$	4,012,178
2093	$	4,132,544
2094	$	4,256,520
2095	$	4,384,215

SCHEDULE 14.3
In-Lieu Transfer Payment

2096	$	4,515,742
2097	$	4,651,214
2098	$	4,790,751
2099	$	4,934,473
2100	$	5,082,507
2101	$	5,234,983
2102	$	5,392,032
2103	$	5,553,793
2104	$	5,720,407
2105	$	5,892,019
2106	$	6,068,780
2107	$	6,250,843
2108	$	6,438,368
2109	$	6,631,519
2110	$	6,830,465
2111	$	7,035,379
2112	$	7,246,440
2113	$	7,463,833
2114	$	7,687,748
2115	$	7,918,381
2116	$	8,155,932
2117	$	8,400,610
2118	$	8,652,629
2119	$	8,912,207
2120	$	9,179,574
2121	$	9,454,961
2122	$	9,738,610
2123	$	10,030,768
2124	$	10,331,691
2125	$	10,641,642
2126	$	10,960,891
2127	$	11,289,718

SCHEDULE 4.2

PROPERTY DISCLOSURES

AMEC, 2011. Report of Results: Phase III Subsurface Investigation Pier 70 Property, Potrero Power Plant, San Francisco, California. May.

Bach, Carol, 2018. Key Site Manager – Pre-Survey Questionnaire. August.

Covenant and Environmental Restriction on Property covering Seawall Lot 340, Seawall Lot 345 (portion), Assessors Block 4110 (portion) and Twentieth Street (portion), generally bounded by Mariposa Street, Illinois Street, 22nd Street, and San Francisco Bay, San Francisco. Recorded in the Official Records of the City and County of San Francisco as Instrument # 2016-K308328-00, August 19, 2016.

Ecology and Environment, Inc., 2001. Phase 1 Brownfields Environmental Site Assessment Report, Pier 70 Maritime Use Area, San Francisco, California. March.

Geosyntec Consultants, 2011. Draft Phase I Environmental Site Assessment, Pier 70 Waterfront Site, San Francisco, California. November.

Haley & Aldrich, 2012. Report on the Northeast Area of the Potrero Power Plant and a Portion of the Southeast Area of Pier 70 Feasibility Study, Potrero Power Plant Site, San Francisco, California . December.

Port of San Francisco, 2014. Fact Sheet, Pier 70 Risk Management Plan. August.

Tetra Tech, 1998. Phase I Environmental Site Assessment for Pier 70 Mixed Use Opportunity Area, San Francisco, California. August.

Treadwell & Rollo, 2008. Site Investigation, Pier 70 Northeastern Shoreline, San Francisco, California. January.

Treadwell & Rollo, 2011. Environmental Site Investigation Report, Pier 70 Master Plan Area, San Francisco, California. January.

Treadwell & Rollo, 2012. Feasibility Study and Remedial Action Plan, Pier 70 Master Plan Area, San Francisco, California. May.

Treadwell & Rollo, 2013. Pier 70 Risk Management Plan, Pier 70 Master Plan Area, San Francisco, California. July.

SCHEDULE 3.1:

CFD AND ASSESSMENT MATTERS

All matters addressed in this Schedule relate to the following actions (the "**CFD Actions**"), all of which the City has undertaken or will undertake in accordance with the San Francisco Special Tax Financing Law (San Francisco Administration Code ch. 43, art. X), which incorporates the Mello-Roos Community Facilities Act of 1982 (Cal. Gov't Code §§ 53311-53368) (collectively, the "**CFD Law**"), to be approved by the Board of Supervisors pursuant to a resolution (the "**Formation Resolution**") to implement the Financing Plan[1] in the VDDA between the Vertical Developer and the Port. Vertical Developer's obligations as to the Special Tax District (defined below) as set forth in this Schedule, the VDDA and the Financing Plan shall be referred to herein as the "**CFD Provisions**". Capitalized terms not otherwise defined herein shall have the meaning set forth in the VDDA. Unless specified otherwise, all statutory references in this Schedule are to the California Government Code.

1. Formation of a Special Tax District. The CFD Actions include the following:

(a) formation of a special tax district designated as "*City and County of San Francisco Special Tax District No. 2018-2 (Pier 70 28-Acre Site/Condominiums)*" (the "**Special Tax District**") that includes the Property within its boundaries, as "Tax Zone 1 of the Special Tax District";

(b) designation of property for potential future annexation to the Special Tax District (the "**Future Annexation Area**");

(c) approval of a rate and method of apportionment (the "**Rate and Method**"), a copy of which is attached to the Delegation of Authority to Vote, for the calculation and levy of the Facilities Special Tax and the Services Special Tax (as each term is defined in the Rate and Method) against the Property (collectively, the "**Special Taxes**");

(d) recordation of the "**Notice of Special Tax Lien**" against the real property in the Special Tax District in the Official Records of the City and County of San Francisco, pursuant to California Government Code Section 53328.3;

(e) authorization to issue bonds secured by the Facilities Special Taxes ("**Bonds**");

(f) authorization to use Bond proceeds and Facilities Special Taxes to finance the construction, completion, and acquisition of improvements described in the Formation Resolution, including the PKN Horizontal Improvements (the "**CFD Improvements**"); and

(g) authorization to levy and use Services Special Taxes in perpetuity to finance services described in the Formation Resolution such as capital maintenance and repair of the CFD Improvements (the "**Services**").

2. Fee Interest Subject to CFD Provisions. The Vertical Developer acknowledges and agrees as follows.

(a) Its fee interest in the Property will be subject to the levy of Special Taxes and the Vertical Developer will not have any right to amend the CFD Provisions without the consent of Port, in its sole discretion.

(b) It is critical to each of the City, the Port, and Vertical Developer that the construction and completion of the CFD Improvements required to develop the Property be coordinated in all respects (including cost, timing, capacity, function, and type) with the

[1] Financing Plan is defined in the VDDA, no need to define it again here.

construction and completion of the CFD Improvements for other property in the Special Tax District.

(c) If the Property were excluded from the Special Tax District, or the Special Taxes to be levied on the Property were reduced or eliminated, coordination of CFD Improvements required to develop the Property with CFD Improvements for other property in the Special Tax District would be materially adversely affected.

3. Cooperation with CFD Matters. The Vertical Developer agrees to the following with respect to the Special Tax District, the levy of the Special Taxes, and the issuance of any Bonds, at the Vertical Developer's sole expense.

(a) The Vertical Developer will:

(i) enter into that certain "Agreement to Comply with CFD Matters" in the form attached hereto as ***Attachment 1*** which agreement shall be recorded against title to the Property;

(ii) if determined necessary by the City, and at the request of the City, cooperate with the City if the City decides to enter into a joint community facilities agreement or any other agreement necessary to finance CFD Improvements and Services (collectively, the "**JCFA**") that will be owned or operated by government agencies other than the City or its agencies; and

(iii) delegate its authority to vote in any election or action to form the Special Tax District, which delegation shall be in the form attached hereto as ***Attachment 2*** ("Delegation of Authority to Vote").

(b) The Vertical Developer will not, at any time or in any manner, contest, protest, or otherwise challenge any of the following:

(i) the formation of the Special Tax District, provided it conforms with the Delegation of Authority to Vote;

(ii) the designation of the Future Annexation Area;

(iii) the authorization, levy, or amount of the Special Taxes on the Property , provided the Special Taxes are levied in compliance with the Rate and Method in the form attached to the Formation Resolution, and further provided that the Rate and Method in the form attached to the Formation Resolution is not modified from the form attached to the Delegation of Authority to Vote in any manner that would (x) increase the amount of the special taxes that may be levied on the Property, or any portion thereof, or (y) accelerate the timing of the levy of the special taxes on the Property, or (z) materially increase the apportionment of the special taxes to the Property relative to the other properties in the Special Tax District;

(iv) the authorization to issue the Bonds;

(v) the CFD Improvements and Services to be financed by the Special Tax District; and

(vi) the establishment of an appropriations limit for the Special Tax District.

(c) If required for the Special Tax District to levy Special Taxes or issue Bonds, the Vertical Developer will acknowledge that the Property is subject to the lien of the Special Tax District and the levy of Special Taxes and that the Special Tax District is authorized to issue Bonds.

(d) The Vertical Developer will not bring any action, suit, or proceeding against the Special Tax District or the City; provided, however, that after exhausting its appeal rights under the Rate and Method, the Vertical Developer may bring an action, suit, or

proceeding against the Special Tax District or the City if it relates solely to an allegation that the Special Taxes have not been levied in accordance with the Rate and Method.

(e) The Vertical Developer will not take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken with respect to the Special Tax District's formation or the issuance of Bonds, including when Special Taxes are first levied, the amount of Special Taxes, the apportionment of Special Taxes, and the use of the Special Taxes collected by the Special Tax District provided such actions taken with respect to the Special Tax District's formation and the Rate and Method conforms with the Delegation of Authority to Vote.

4. The following definitions apply to this Schedule.

(a) "**Actual Knowledge**" means the knowledge that the person signing this VDDA has on the date of execution of this VDDA or has obtained from:

(i) interviews with current officers and responsible employees of the Vertical Developer and its Affiliates that the person has determined are likely, in the ordinary course of their respective duties, to have knowledge of the matters set forth in this VDDA;

(ii) a review of documents that the person determined were reasonably necessary to obtain knowledge of the matters set forth in this VDDA; or

(iii) both, in any case without conducting any extraordinary inspection or inquiry except as prudent and customary in connection with the ordinary course of the Vertical Developer's current business and operations or contacting individuals who are no longer employees of the Vertical Developer or its Affiliates.

(b) "**Affiliate**" has the meaning set forth in the VDDA and for purposes of this Schedule 3.1, shall only include an Affiliate about whom information could be material to potential investors deciding whether to invest in future Bonds.

(c) "**Related Property**" means any real property interest owned or held by the Vertical Developer or any of its Affiliates within California.

5. Compliance. The Vertical Developer represents and warrants as of the Effective Date as follows:

(a) With respect to Related Property located within the boundaries of a development project in California, except as set forth in Attachment 3, to Vertical Developer's Actual Knowledge, neither Vertical Developer nor Vertical Developer's Affiliates within the last five years have:

(i) intentionally failed to pay when due any property taxes, special taxes, or assessments levied or assessed against the Related Property; or

(ii) owned any interest in Related Property in California that became either tax deeded to a governmental agency or the subject of foreclosure proceedings for failure to pay property taxes, special taxes, or assessments levied or assessed against the Related Property.

(b) Except as set forth in ***Attachment 3***, neither the Vertical Developer nor its Affiliates have failed to comply in the last five years with its obligations under any continuing disclosure agreement entered into in connection with the issuance of bonds of a community facilities or assessment district relating to Related Property in California.

The Vertical Developer hereby agrees that if its representations and warranties as to the Vertical Developer in this Section 5 are discovered to be untrue after the Effective Date of this Financing Plan, the Port may, in its discretion, elect to terminate this VDDA. The Vertical Developer further hereby agrees that if its representations as to Vertical Developer's Affiliates are discovered to be untrue after the Effective Date of this VDDA, the Port may elect to

terminate this VDDA if it concludes, in its sole discretion, that the actual facts could adversely affect the willingness of potential investors to invest in future Bonds.

6. Acknowledgment of the Rate and Method. A draft of the Rate and Method has been provided to the Vertical Developer prior to the Effective Date of this VDDA and is attached to the Delegation of Authority to Vote. The Vertical Developer has read and, if deemed necessary, consulted with counsel, regarding the provisions of the Rate and Method. The provisions of the Rate and Method with respect to the timing, amount and apportionment of the Special Taxes applicable to Tax Zone 1 shall not be changed without the written consent of the Vertical Developer. The Vertical Developer shall be provided fifteen (15) days to review and comment on all subsequent revisions to the Rate and Method.

7. Issuance of Bonds. This Section will apply to the Special Tax District's issuance of Bonds at any time during which the Vertical Developer owns real property within Tax Zone 1 of the Special Tax District.

(a) The Vertical Developer will (A) disclose to each secured lender that provides funds for the Vertical Developer's development of the Property, and (B) exercise its commercially reasonable efforts to provide, at the request of the City or any Financing Participant (as defined in subsection (c) below), certificates or other documents executed by each such lender signifying the lender's acknowledgment of:

(i) the imposition of the Special Taxes on the Property;

(ii) the issuance of Bonds; and

(iii) the Special Tax District's foreclosure rights if the Vertical Developer is delinquent in the payment of Special Taxes.

(b) The Vertical Developer acknowledges that Bonds may be issued in one or more series over time, that the issuance of each series of Bonds may require information and documents to be provided by the Vertical Developer, and that the timely provision of that information and documents for each series of Bonds is critical for the Horizontal Developer and the Port to achieve their respective financial goals. The Vertical Developer's obligations will arise with the issuance of each series of Bonds and continue as provided in any related continuing disclosure agreement executed by the Vertical Developer.

(c) The Vertical Developer will not interfere with or impede the issuance of any series of Bonds issued by or in connection with the Special Tax District and will, at the Vertical Developer's expense, provide information in connection with each series of Bonds as requested by any of the following (collectively, the "**Financing Participants**"):

(i) the City, the Port, and any other JCFA Party, or any of their agents, including bond counsel and disclosure counsel;

(ii) appraisers engaged to appraise the Property;

(iii) market absorption consultants;

(iv) underwriters and underwriters' counsel;

(v) financial advisors associated with the Bonds or the Special Tax District; and

(vi) persons providing credit enhancement for the Bonds or the Special Tax District.

(d) The Vertical Developer will provide, at Vertical Developer's expense, required information, which may include:

(i) a description of the Vertical Developer's financing sources to develop the Property;

(ii) a description of the proposed development project on the Property and the general ownership structure of the Vertical Developer;

(iii) the status of development of the Property, including, if applicable, the rent roll (excluding any personal information related to residential tenants) and vacancy history;

(iv) any history of material special tax, assessment or real property tax delinquencies and defaults by the Vertical Developer and its Affiliates with respect to Related Property, including the information disclosed on ***Attachment 3***, within the prior five (5) years;

(v) prior to the receipt of the final temporary certificate of occupancy for the Vertical Project, financial and operating information, including a development pro forma, with respect to the Vertical Developer and the Property;

(vi) certificates requested by the Financing Participants, which may include representations on:

(1) the due formation of the Vertical Developer;

(2) the due execution of documents executed by the Vertical Developer in connection with the Special Tax District or any Bonds;

(3) no material litigation or investigation by or against the Vertical Developer or its Affiliates that seeks to prohibit, restrain, or enjoin the development of the Property, or in which the Vertical Developer or its Affiliates may be adjudicated as bankrupt or discharged from any or all debts or obligations or granted an extension of time to pay or a reorganization or readjustment of its debts, or which, if determined adversely to the Vertical Developer or its Affiliates, could materially adversely affect the development of the Property and the payment of the Special Taxes; and

(4) the accuracy of the information provided by Vertical Developer or its Affiliates in connection with the issuance of any series of Bonds, including the information in all disclosure documents; and

(vii) opinions of counsel to the Vertical Developer reasonably requested by any of the Financing Participants, which may include any matter listed in clause (vi) of this Subsection and a 10b-5 negative assurance regarding any disclosure about the Vertical Developer and its Affiliates in the offering statement used to market the Bonds, which opinions may be limited to specific counsel's actual knowledge and qualified as is customary for such opinions.

(e) The City will decide on the amount and application of any capitalized interest in consultation with the Horizontal Developer, and the Vertical Developer will not contest the amount and application of capitalized interest.

(f) Vertical Developer shall not be required to provide any renewable letter of credit, cash, or other form of credit enhancement in connection with the issuance of the Bonds.

(g) The Vertical Developer will execute and perform under any commercially reasonable and customary continuing disclosure agreement that may be required by the underwriter of the Bonds.

(h) The Vertical Developer acknowledges that due to changes in customary practices or applicable law, the underwriter for any series of Bonds to which this Section 7 is applicable may require information from the Vertical Developer that is different from or in addition to that listed above, in which case the Vertical Developer, at its own cost and expense, will provide such information.

8. Cooperation to Amend the Special Tax District.

(a) The Vertical Developer acknowledges that the Port, the Horizontal Developer, or the City may request proceedings to amend the Special Tax District ("**Change Proceedings**"). **Subsection 8(b)** will apply so long as the changes contemplated by the Change Proceedings:

(i) do not increase the Special Tax rates to be levied on the Property above Special Tax rates for the Property, escalated to the date of calculation, under the Rate and Method;

(ii) do not change the Rate and Method so that the Vertical Developer is taxed sooner than under the current version of the Rate and Method; and

(iii) do not result in more favorable treatment of one or more other tenants or property owners in the Special Tax District compared to the treatment of the Vertical Developer and the Property.

(b) Subject to **Subsection 8(a)**, the Vertical Developer shall not contest, protest, or otherwise challenge Change Proceedings to the Special Tax District.

9. Annexation of Property to the Special Tax District.

(a) The Vertical Developer acknowledges that in accordance with the CFD Law:

(i) the City has designated certain property as a Future Annexation Area to the Special Tax District;

(ii) from time to time, parcels of the Future Annexation Area may be annexed to the Special Tax District by execution of a unanimous written consent of the owners of the parcels of Future Annexation Area to be annexed without a public hearing or election; and

(iii) the Horizontal Developer, City, and Port may also request annexation of additional property to the Special Tax District.

(b) The Vertical Developer will not:

(i) contest, protest, or otherwise challenge the annexation of any additional property to the Special Tax District as described in **Section 9(a)** above, or the imposition of the levy of Special Taxes on the annexed property; or

(ii) take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken by the Horizontal Developer or the owners of property (including the owners of the Future Annexation Area) with respect to the annexation of additional property to the Special Tax District.

10. Activity in Other Special Tax Districts. The Vertical Developer acknowledges that other parcels in the SUD are included in a separate special tax district formed by the City (the "**Other STD**") and agrees not to:

(a) contest, protest, or otherwise challenge the formation, implementation, levy of special taxes in, or issuance of bonds by the Other STD, or the annexation of additional property to, or any Change Proceedings conducted with respect to, the Other STD; or

(b) take any other action that would in any way interfere with the operation of the Other STD or decisions made or actions taken by the City, the Port, and the Horizontal Developer with respect to the Other STD.

11. Shortfall Provisions.

(a) All capitalized terms used in this **Section 11** that are not otherwise defined herein shall have the meaning given such terms in the VDDA.

(b) The Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Premises until the IFD Termination Date.

(c) If the Vertical Developer initiates a Reassessment on the Premises in violation of **Section 11(b)** above, then the following shall occur:

(i) Vertical Developer will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(ii) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

12. FC Acquisition Agreement.

The Vertical Developer acknowledges that the Vertical Developer is not and will not become either a party, a third-party beneficiary, or an assignee to the Financing Plan between the Horizontal Developer and the Port, as amended by that First Addendum to Financing Plan (as amended, the "**FC Financing Plan**"). The Vertical Developer further agrees not to contest, protest or otherwise challenge the rights or obligations of the Horizontal Developer or the Port under the FC Financing Plan unless such rights or obligations materially conflict with or impair the Vertical Developer's rights pursuant to the Financing Plan, as reasonably determined by Vertical Developer.

13. General Provisions.

(a) The Vertical Developer will pay prior to delinquency all Special Taxes levied on the Property while the Vertical Developer owns in the Property.

(b) The Vertical Developer will not petition, support, encourage, consent to, or implement any action seeking to reduce or repeal the levying of all or any part of the Special Taxes in the Special Tax District, except at the written request of the Port and the City.

(c) The Vertical Developer will disclose the requirements of this Schedule to any tenant of the entirety of the Property for a term of thirty five (35) or more years and require such tenant to enter into an agreement with the Vertical Developer and Port assuming the Vertical Developer's obligations under this Schedule. This paragraph will not apply to any rentals to apartment dwellers or tenants of less than all of the Property. If required, the Vertical Developer will comply with disclosures required by Section 53341.5.

(d) The Port is required to provide to the Vertical Developer a notice of special tax pursuant to Section 53341.5 regarding the Special Taxes in the Rate and Method (the "**Notice of Special Tax**"). The Notice of Special Tax is attached as ***Attachment 4*** and the Vertical Developer shall execute and return to the Port a copy of the Notice of Special Tax within three business days after executing this VDDA.

(e) The covenants and provisions contained in this Schedule remain in effect for the term of this VDDA.

Attachment 1: Agreement to Comply with CFD Matters
Attachment 2: Delegation of Authority to Vote on Formation of CFD
Attachment 3: Certain Representations of Vertical Developer
Attachment 4: Notice of Special Tax

ATTACHMENT 2

DELEGATION OF AUTHORITY TO VOTE ON FORMATION OF STD

DESIGNATION OF AUTHORIZED REPRESENTATIVE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 53326(b)

_____, 2018

Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Formation of Special Tax District for Parcel K North

To Whom It May Concern:

The undersigned (the "Owner") is the owner of property identified as City and County of San Francisco Assessor's Parcel Number _____ (the "Property"). The Property is located within a proposed special tax district to be formed by the City and County of San Francisco (the "Proposed Pier 70 Condo CFD") and is subject to a Vertical Disposition and Development Agreement between the City and County of San Francisco, acting by and through the San Francisco Port Commission and the Owner (the "VDDA"). The Proposed Pier 70 Condo CFD will include properties within a 28-acre portion of Pier 70 that will be developed with residential condominiums. The Proposed Pier 70 Condo CFD does not yet have an official name, but for purposes of this designation, the Proposed Pier 70 Condo CFD shall be that special tax district which is sponsored by the City and County of San Francisco that includes the Property and is authorized to finance the [Michigan Street Improvements] as defined in the VDDA. The most recent draft of the rate and method of apportionment of special taxes of the Proposed Pier 70 Condo CFD (the "Rate and Method") is attached hereto as Attachment No. 1.

Pursuant to Section 53326(b) of the California Government Code, the Owner does hereby designate the Executive Director of the San Francisco Port Commission as its "authorized representative" in connection with the landowner election on the propositions to (i) form the Proposed Pier 70 Condo CFD, (ii) authorize the levy of special taxes in the Proposed Pier 70 Condo CFD, (iii) authorize the issuance of bonded indebtedness by the City and County of San Francisco for the Proposed Pier 70 Condo CFD, and (iv) establish an appropriations limit for the Proposed Pier 70 Condo CFD. The San Francisco Port Commission is the immediate past owner of the Property.

The true and exact signature of the authorized representative of the Owner is set forth below.

The foregoing authorization shall be effective at any time after the date hereof and shall be revocable by Owner prior to the landowner election only if the Rate and Method is modified in any manner that would increase the amount of the special taxes that may be

levied on the Property, or any portion thereof, or accelerate the timing of the levy of the special taxes on the Property or materially increase the apportionment of the special taxes to the Property relative to the other properties in the Proposed Pier 70 Condo CFD. **The Notice of Special Tax attached hereto as Attachment No. 2 is in the form required by Section 53341.5 of the California Government Code and has been executed by the Owner. The Notice of Special Tax provides information about the rate, method of apportionment, and manner of collection of the special tax in sufficient detail to allow the Owner to estimate the maximum amount that the Owner will have to pay**

This authorization is revocable by Owner prior to the landowner election only under the conditions described above by written notice to the Board of Supervisors. Unless the authorization herein has been revoked by Owner prior to the landowner election in accordance with the terms of this delegation, the Owner waives its right to make any protest or complaint or undertake any legal action challenging the validity of the election or the validity of the Proposed Pier 70 Condo CFD.

Pursuant to Section 53326(b), set forth below are the authorized signatories for all parties making up the Owner (if more than one person or entity constitutes the Owner, or if ownership is held in the name of more than one person or entity).

PKN, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGED AND ACCEPTED:

_____
Elaine Forbes
Executive Director
San Francisco Port Commission

ATTACHMENT 2

DELEGATION OF AUTHORITY TO VOTE ON FORMATION OF STD
ATTACHMENT NO. 1

RATE AND METHOD

ATTACHMENT NO. 2

NOTICE OF SPECIAL TAX

ATTACHMENT 1

RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:
Clerk of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Affected APNs:	Affected Addresses:

AGREEMENT TO COMPLY WITH CFD MATTERS

(Pier 70 - Parcel K North)

THIS AGREEMENT TO COMPLY WITH CFD MATTERS (this "Agreement") dated for reference purposes only as of _____, 20____, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the San Francisco Port Commission ("Port"), and _____, a _____ ("Vertical Developer").

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port owns certain real property located in the City and County of San Francisco consisting of approximately [68,800] square feet of unimproved land, as more particularly described on ***Exhibit A*** attached hereto (the "Property" or "Parcel K North").

B. The Property is located adjacent to the "28-Acre Site Project" located on approximately 28-acres of land in the southeast corner of Pier 70 (the "28-Acre Site").

C. On September 26, 2017, by Resolution No. 17-52, the Port Commission approved (i) the terms of a competitive solicitation and sale of the Property for no less than its appraised fair market value, and (ii) the form of a Vertical Disposition and Development Agreement to be entered into between Port and the successful bidder.

D. Vertical Developer was selected to purchase and develop the Property in a broker-managed, competitive solicitation process undertaken by Port and the City's Real Estate Division.

E. Port and Vertical Developer have entered into that certain Vertical Disposition and Development Agreement (Pier 70 - Parcel K North) dated as of _____, 20__ (the "VDDA"), a memorandum of which is being recorded concurrently herewith.

F. Section 3.3 of the VDDA (CFD Matters and Shortfall Provisions) provides that Vertical Developer will comply with all of the covenants and acknowledgements set forth in Schedule 3.1 attached to the VDDA (CFD Matters), which covenants and acknowledgements will be recorded against title to the Property in the form attached as Attachment 1 to Schedule 3.1 and entitled Agreement to Comply with CFD Matters. The covenants and acknowledgements set forth in Section 3.1 attached to the VDDA are referred to herein as the "CFD Matters".

G. The parties now desire to enter into this Agreement to set forth Vertical Developer's agreement to comply with all of the covenants and acknowledgements set forth in Schedule 3.1 attached to the VDDA.

H. Initially capitalized and other terms are defined herein or in the VDDA. This Agreement is a Transaction Document as defined in the VDDA, and the VDDA contains definitions, rules of interpretation, and standard provisions applicable to Transaction Documents.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Port and Vertical Developer hereby agree as follows:

AGREEMENT

1. EFFECTIVE DATE AND TERMINATION.

1.1. Effective Date. This Agreement will be effective on the Closing Date of the VDDA.

1.2. Independent Termination Date. This Agreement will remain in effect until the IFD Termination Date.

2. AGREEMENT TO COMPLY WITH CFD MATTERS.

Vertical Developer agrees to comply with all of the covenants and acknowledgements attached hereto as ***Exhibit B***. This Agreement does not amend, change or modify the CFD Matters.

3. ENFORCEMENT.

3.1. ***Events of Default.*** Vertical Developer shall be in default under this Agreement if it fails to comply with the provisions of this Agreement and such failure continues for thirty (30) days after Vertical Developer's receipt of notice of such non-compliance from Port, or in the case of a default that is curable but is not susceptible of cure within thirty (30) days, Vertical Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed one hundred and twenty (120) days.

3.2. ***Remedies.*** During the continuance of a default under this Agreement, Port will have all rights and remedies available at law or in equity, including the right to institute such

proceedings as may be necessary, including action to cure the default or to seek specific performance or other injunctive relief.

4. GENERAL PROVISIONS.

4.1. ***Governing Law***. The Transaction Documents will be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code. All legal actions related to the Transaction Documents will be instituted in the Superior Court of the City and County of San Francisco, State of California, in any other appropriate court in the City or, if appropriate, in the Federal District Court in San Francisco, California.

4.2. ***Counterparts***. The Transaction Documents may be executed in multiple counterparts, each of which will be deemed to be an original and that together will be one instrument. Parties may deliver their counterparts by electronic mail or other electronic means of transmission.

4.3. ***Further Assurances***. The parties agree to execute such instruments or to do such further acts as may be reasonably necessary to carry out the provisions of each Transaction Document; provided, however, that no party will be obligated to provide such instruments and to do such further acts that would materially increase such party's liabilities hereunder or materially decrease such party's rights hereunder. The provisions of this section will survive the Closing.

4.4. ***Third-Party Beneficiary.*** The Horizontal Developer is an express third-party beneficiary of this Agreement and may enforce each provision against the Vertical Developer as if the Horizontal Developer were a party to this Agreement.

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

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

By: _____
Elaine Forbes
Executive Director

Approved by Port Resolution No. ____ and Board Resolution No. _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

VERTICAL DEVELOPER:

_____
a _____

By: _____
[NAME]

Its: _____

[insert notary acknowledgment]

EXHIBIT A

DESCRIPTION OF THE PROPERTY

EXHIBIT B

CFD AND ASSESSMENT MATTERS

(SCHEDULE 3.1 OF THE VDDA)

1-14-19 Jones Hall Draft

ATTACHMENT 4

NOTICE OF SPECIAL TAX

CITY AND COUNTY OF SAN FRANCISCO
SPECIAL TAX DISTRICT NO. 2019-__
(PIER 70 CONDOMINIUMS)

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY IDENTIFIED AS FOLLOWS (THE "**PROPERTY**"):

[insert APN and legal description]

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR ENTERING INTO A CONTRACT TO PURCHASE THIS PROPERTY. THE SELLER IS REQUIRED TO GIVE YOU THIS NOTICE AND TO OBTAIN A COPY SIGNED BY YOU TO INDICATE THAT YOU HAVE RECEIVED AND READ A COPY OF THIS NOTICE.

Each Assessor's Parcel (also, a "**Parcel**") of this Property (in existence now or as further subdivided in the future) is subject to a facilities special tax (the "Facilities Special Tax") and services special tax (the "Services Special Tax" and, with the Facilities Special Tax, the "Special Taxes") that are in addition to the regular property taxes and any other charges, fees, special taxes, and benefit assessments on the Property. The Special Taxes are imposed on each Parcel of the Property because it is a new development, and is not necessarily imposed generally upon property outside of this new development. If you fail to pay the Special Taxes levied on a Parcel of the Property when due each year, the delinquent Parcel may be foreclosed upon and sold. The Special Taxes are used to provide facilities and public services that are likely to particularly benefit the Property. YOU SHOULD TAKE THE SPECIAL TAXES AND THE BENEFITS FROM THE FACILITIES AND PUBLIC SERVICES FOR WHICH THEY PAY INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

The Property you are purchasing is located within the boundaries of City and County of San Francisco Special Tax District No. 2019-__ (Pier 70 Condominiums) ("**Pier 70 Condo CFD**"); within the boundaries of the Pier 70 Condo CFD, the Property is located in Zone 1. The Special Taxes are levied pursuant to a Rate and Method of Apportionment of Special Taxes (the "**Rate and Method**") for the Pier 70 Condo CFD. A copy of the Rate and Method applicable to this Property is attached as Exhibit "C" to the Notice of Special Tax Lien attached hereto as Exhibit 1 (the "**Notice of Special Tax Lien**"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Rate and Method.

Classification of Property

At the time of formation of the Pier 70 Condo CFD, the Property will constitute Undeveloped Property. The Property will become Developed Property for purposes of the levy

of the Facilities Special Tax and the Services Special Tax as set forth in the definition of Developed Property in the Rate and Method:

(1) For levy of the Facilities Special Tax: all Taxable Parcels for which the 36-month anniversary of the VDDA Execution Date has occurred in a preceding Fiscal Year, regardless of whether a Building Permit has been issued.

(2) For levy of the Services Special Tax: all Taxable Parcels for which a Certificate of

Occupancy was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

Maximum Special Taxes

The Maximum Facilities Special Tax and the Maximum Services Special Tax are defined in the Rate and Method as follows:

"Maximum Facilities Special Tax" means the greatest amount of Facilities Special Tax that can be levied on a Taxable Parcel in any Fiscal Year determined in accordance with Sections C, D, and E of the Rate and Method. Table 1 in the Rate and Method identifies the Base Facilities Special Tax, which will be used to determine the Maximum Facilities Special Tax when a Taxable Parcel becomes Developed Property.

"Maximum Services Special Tax" means the greatest amount of Services Special Tax that can be levied on a Taxable Parcel in any Fiscal Year determined in accordance with Sections C, D, and E of the Rate and Method. Table 3 in the Rate and Method identifies the Base Services Special Tax, which will be used to determine the Maximum Services Special Tax upon issuance of the first Certificate of Occupancy on a Taxable Parcel. **Adjustments to the Maximum Special Taxes**

Section D of the Rate and Method describes the circumstances in which the Maximum Facilities Special Tax and the Maximum Services Special Taxes may be adjusted, including annual escalation, rezoning or other Land Use Changes, changes in Expected Land Uses and changes in the boundaries of the Planning Parcels. In addition, the Maximum Facilities Special Taxes may be reduced prior to the First Bond Sale as described in Section D.

Term of the Special Taxes

The Facilities Special Tax shall be levied and collected on a Taxable Parcel until the Fiscal Year that is the 120th Fiscal Year in which the Facilities Special Tax has been levied on the Taxable Parcel.

The Services Special Tax shall be levied and collected in perpetuity.

Prepayment

The Special Taxes may not be prepaid.

Authorized Facilities and Services

The authorized facilities that are being paid for by the Facilities Special Taxes, and by the money received from the sale of bonds that are being repaid by the Facilities Special Taxes, are described in Exhibit B to the Notice of Special Tax Lien attached hereto as Exhibit 1.

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

The authorized public services that are being paid for by the Special Tax are described in Exhibit B to the Notice of Special Tax Lien attached hereto as Exhibit 1.

Further Information

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION THAT AUTHORIZED CREATION OF PIER 70 CONDO CFD, AND THAT SPECIFIES MORE PRECISELY HOW THE SPECIAL TAXES ARE APPORTIONED TO EACH PARCEL OF THE PROPERTY AND HOW THE PROCEEDS OF THE SPECIAL TAXES WILL BE USED, FROM THE SPECIAL TAX CONSULTANT, GOODWIN CONSULTING GROUP, INC., 333 UNIVERSITY AVE # 160, SACRAMENTO, CA 95825, TELEPHONE: (916) 561-0890. THERE MAY BE A CHARGE FOR THESE DOCUMENTS NOT TO EXCEED THE REASONABLE COST OF PROVIDING THE DOCUMENTS.

Acknowledgment

I (WE) ACKNOWLEDGE THAT I (WE) HAVE READ THIS NOTICE AND RECEIVED A COPY OF THIS NOTICE PRIOR TO ENTERING INTO A CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITH RESPECT TO THE ABOVE-REFERENCED PROPERTY. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITHIN THREE DAYS AFTER RECEIVING THIS NOTICE IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER, SUBDIVIDER, OR AGENT SELLING THE PROPERTY.

DATE: _____ BUYER: _____

DATE: _____ BUYER: _____

DATE: _____ BUYER: _____

EXHIBIT 1
NOTICE OF SPECIAL TAX LIEN

[see attached]