

**FIRST AMENDMENT
to the
JOINT EXERCISE OF POWERS AGREEMENT**

**Between the
City of San Diego, the Redevelopment Agency of the City of San Diego, acting through the
Centre City Development Corporation,
and the
San Diego Unified Port District**

THIS FIRST AMENDMENT TO THE JOINT EXERCISE OF POWERS AGREEMENT (“First Amendment”), dated for reference purposes only as of March __, 2011, is made and entered into by and among the City of San Diego, a municipal corporation and charter city organized and existing under the laws of the State of California (the “City”), the Redevelopment Agency of the City of San Diego, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the “Agency”), acting through the Centre City Development Corporation, a non-profit public benefit corporation (“CCDC”), and the San Diego Unified Port District, a public entity, duly organized and existing as a port district under and by virtue of the laws of the State of California (the “Port”). The City, the Agency, CCDC and the Port are collectively referred to in this First Amendment as the “Parties” and individually as a “Party.” The Parties enter into this First Amendment in light of the following recited facts, each a “Recital.”

RECITALS

A. On April 9, 2007, the City, the Agency, acting through CCDC, and the Port created and established the North Embarcadero Alliance Joint Powers Authority (the “Authority”) through the execution of a Joint Exercise of Powers Agreement (the “Authority Agreement”) to implement the North Embarcadero Alliance Visionary Plan (the “Visionary Plan”) and to exercise the powers described in the Authority Agreement.

B. In or about June of 2007, a consultant team led by Project Design Consultants was selected by the City, the Agency, CCDC and the Port to provide architectural and engineering design services for Construction documents for the First Phase of the Visionary Plan (the “First Phase”), as previously defined in the Authority Agreement, as well as certain improvements to West Broadway, with the costs for the design work shared equally between the Agency, acting through CCDC, and the Port.

C. On April 8, 2008, the Port’s Board of Port Commissioners recommended that the Construction limits of the First Phase be changed to: (i) include West Broadway with the crest lowered to improve the aesthetics of the Broadway Great Hall, the drainage at Pacific Highway and West Broadway, and the cross-section of the Harbor Drive esplanade; (ii) defer Construction of permanent improvements to the esplanade adjacent to the “B” Street Pier to an appropriate future phase; and (iii) extend the esplanade south to the former Navy Pier 11A to provide symmetry on each side of the Broadway Pier and to link the new improvements with the South Embarcadero.

D. On April 17, 2008, the Authority Board recommended that the Construction limits of the First Phase be changed as described in Recital C above.

E. On April 23, 2008, the CCDC Budget/Finance and Administration Committee recommended that the Construction limits of the First Phase be changed as described in Recital C above, and recommended certain funding parameters for this modified First Phase.

F. Pursuant to these recommendations of the Port, the Authority Board and CCDC's Budget/Finance and Administration Committee, the Parties in 2009 refined the scope of the Construction of the First Phase; defined the phasing for Construction of the First Phase; and established a funding plan for the First Phase.

G. In or about June of 2009, CCDC recommended that the Agency approve the revisions to the First Phase, the phasing of Construction of the First Phase, and the funding for the Construction of the First Phase through an amendment to the Authority Agreement.

H. In or about July of 2009, the Port approved a coastal development permit (No. A-6-PSD-09-43) for the Construction of the First Phase, as contemplated by the Parties at that time, and took action to approve the necessary amendment to the Authority Agreement concerning the phasing and funding of Construction of the First Phase.

I. Prior to action by the Agency on the amendment to the Authority Agreement described in Recitals G and H above, however, the Port's issuance of the coastal development permit for the First Phase, as contemplated by the Parties at that time, was appealed to the California Coastal Commission (the "Commission").

J. On or about April 14, 2010, the Commission denied coastal development permit No. A-6-PSD-09-43, but the Commission made several suggestions as to how the project could be modified to obtain Commission approval in the future, including, in general terms, additional public outreach by the Port and the addition of public space along the North Embarcadero.

K. Since the Commission's action, the Port has engaged in a substantial public outreach process to revise the scope of the First Phase to address the suggestions of the Commission and the public.

L. Based upon the Commission's suggestions and through the public process, the Port has revised the scope of the First Phase to include the design and construction of a public space within a 150-foot setback from North Harbor Drive along the Lane Field Property (the "Setback Park/Plaza").

M. On or about January 11, 2011, the Port approved a new coastal development permit (No. 2011-01) for the First Phase, including the Setback Park/Plaza which the Parties acknowledge is an integral component of the revised First Phase project.

N. Through this First Amendment, the Parties wish to implement the changes to the Construction limits of the First Phase as described in these Recitals, and establish the funding and maintenance plan for the Construction of this modified First Phase.

NOW, THEREFORE, in consideration of the Recitals, which are incorporated into this First Amendment, and the mutual obligations and desires of the Parties, the City, the Agency, acting through CCDC, and the Port agree that the Authority Agreement is hereby amended as follows:

1. Amendments to Section 1 (Definitions) of the Authority Agreement Section 1 of the Authority Agreement is hereby amended as follows:

1.1 The definition of “First Phase” contained in Section 1 of the Authority Agreement is hereby deleted and replaced in its entirety with the following definition:

“First Phase” means that part of the North Embarcadero area consisting of Harbor Drive between Hawthorn Street and Grape Street, the right-of-way boundary on the east side of Harbor Drive west to San Diego Bay from the prolongation of the south face of “B” Street Pier to the prolongation of the north face of the former Navy Pier 11A, all road improvements required to make the transition between the realigned and existing Harbor Drive, and the area within the right-of-way boundary on West Broadway, more specifically identified as that area between the existing north and south curbs, from the intersection of Harbor Drive and West Broadway to the railroad tracks between Pacific Highway and Kettner Boulevard. The First Phase includes the Construction work within and the lowering of the crest of the West Broadway right-of-way from the intersection of Harbor Drive and West Broadway to the railroad tracks between Pacific Highway and Kettner Boulevard and the Construction work along Harbor Drive between Hawthorn Street and Grape Street, the right-of-way boundary on the east side of Harbor Drive west to San Diego Bay from the prolongation of the south face of the “B” Street Pier to the prolongation of the north face of the former Navy Pier 11A, and all road improvements required to make the transition between the realigned and existing Harbor Drive, as depicted in Attachment A of this First Amendment and as more particularly described in the public improvement plans prepared by Project Design Consultants and approved by the Parties. The First Phase also includes, without limitation, the Design and Construction of Setback Park/Plaza.

1.2 The following definition of “Setback Park/Plaza” is hereby added to Section 1 of the Authority Agreement:

“Setback Park/Plaza” means an approximately two-acre public park/plaza to be designed and constructed within a 150 foot setback from North Harbor Drive along the Lane Field Property. Setback Park/Plaza shall be designed to a quality similar to the public spaces to be constructed as part of the First Phase along

West Broadway, and will include a mix of hardscape and landscape, including lawn or turf space appropriate and available for passive recreation such as sitting and picnicking. The Parties contemplate that Setback Park/Plaza will be designed and constructed by the developer of the Lane Field Property. However, this First Amendment provides for the funding of the Design and Construction of Setback Park/Plaza in the event that it is not timely designed and constructed by the developer of the Lane Field Property.

1.3 The following definition of “Broadway Pier Surface Improvements” is hereby added to Section 1 of the Authority Agreement:

“Broadway Pier Surface Improvements” means those surface public improvements on Broadway Pier in the area east of the building open to the public, as well as the area on the south side of the building and the apron behind the building, as depicted in Attachment A of this First Amendment.

2. Amendments to Section 6 (Funding) of the Authority Agreement Section 6 of the Authority Agreement is hereby amended to add the following new Section 6.1 regarding the funding for the Construction of the First Phase, Setback Park/Plaza and the Broadway Pier Surface Improvements:

6.1 Funding of First Phase Construction. The Project Costs for the First Phase, excluding the Design and Construction of Setback Park/Plaza, are estimated to be Twenty-Eight Million Six Hundred Thousand Dollars (\$28,600,000). The actual Project Costs of the First Phase shall be divided equally between the Agency, acting through CCDC, and the Port, subject to the credits, advances and other provisions of this Section 6.1.

6.1.1 First Phase Port Credit. The Port shall receive an initial credit (the “First Phase Port Credit”), estimated to be One Million Three Hundred Forty Thousand Dollars (\$1,340,000), to be applied first against the Port’s share of the Project Costs of the First Phase. The First Phase Port Credit is provided in recognition of the structural improvements the Port has made to the Broadway Pier.

6.1.2 First Phase Advance. The Agency, acting through CCDC, and contingent upon the Agency and the City making all required findings under applicable law, shall, upon request of the Port, advance the Port’s remaining share of the Project Costs of the First Phase, estimated to be Twelve Million Nine Hundred and Sixty Thousand Dollars (\$12,960,000) (the “First Phase

Advance”). The First Phase Advance shall accrue interest until fully repaid at the rate of Four and Seventy Seven Hundredths Percent (4.77%) per year and shall be memorialized in a reimbursement agreement (the “First Phase Advance Repayment Agreement”) as provided in Section 6.1.5. The actual amount of the First Phase Advance shall be the difference between the Port’s share of the actual Project Costs of the First Phase, less the final amount of the First Phase Port Credit, as defined in Section 6.1.1.

6.1.3 The Maintenance Credit. As more fully described in Sections 7.1 and 7.2, the Port shall assume responsibility for the maintenance of the First Phase improvements. In recognition of the Port’s assumption of these maintenance obligations, the Port’s repayment obligation to the Agency shall be reduced to reflect the present value of fifty percent (50%) of the estimated Four Hundred Thousand Dollars (\$400,000) in annual Incremental Maintenance Costs for the First Phase improvements, as defined more fully in this Section 6.1.3 (the “Maintenance Credit”). The Maintenance Credit shall be Four Million Three Hundred Eighty Three Thousand Eight Hundred Sixty Two Dollars (\$4,383,862) calculated based upon the net present value of Two Hundred Thousand Dollars (\$200,000) in annual Incremental Maintenance Costs for the First Phase improvements for a period of thirty (30) years escalated at three percent (3%) per year discounted to present value utilizing a discount factor of five percent (5%). Additionally, upon completion of the Design of Setback Park/Plaza described in Section 6.1.6, the annual Incremental Maintenance Costs for Setback Park/Plaza shall be calculated and agreed to by the Parties. The agreed upon annual Incremental Maintenance Costs shall be added to the Maintenance Credit, with such addition to be calculated on the same basis as provided above, and the credits and advances described in this First Amendment shall be adjusted accordingly, including, without limitation, through an amendment to the First Phase Advance Repayment Agreement. As used in this First Amendment, the phrase “annual Incremental Maintenance Costs” refers to the annual maintenance costs attributable to the First Phase improvements that are in excess of the Port’s current maintenance costs. Through the Maintenance Credit, the Agency, acting through CCDC, shall be contributing a greater share of capital for the Project Costs of the First Phase improvements, and will not in any way be paying for the maintenance of those improvements.

6.1.4 First Phase Advance Maintenance Credit. Upon the transfer of the maintenance obligations for the First Phase improvements to the Port, and upon the Port’s written acceptance

of those maintenance obligations, the Port shall be entitled to a credit against the principal and accrued interest then due and owing on the First Phase Advance in the amount of the Maintenance Credit (the "First Phase Advance Maintenance Credit"). The Port and the Agency, acting through CCDC, shall execute an amendment to the First Phase Advance Reimbursement Agreement to reflect the First Phase Advance Maintenance Credit when that credit is provided.

6.1.5 Security for and Repayment of First Phase Advance. The Port's obligation to repay the First Phase Advance shall be documented through the execution of the First Phase Advance Repayment Agreement in substantially the form attached to this First Amendment as Attachment "C". The First Phase Advance shall be secured by and will be repaid as provided in this Section 6.1.5. The Port may prepay the First Phase Advance at any time, without penalty.

6.1.5.1 Repayment from Lane Field Revenue. Except as otherwise provided in Sections 6.1.5.2 and 6.1.5.3, the First Phase Advance shall be secured by and will be repaid annually from not less than fifty percent (50%) of the aggregate (gross) amount of any and all revenue, lease payments, income or other compensation, in whatever form and however described, received by the Port from its lease(s) (the "Lane Field Lease(s)") of the Lane Field Property (the "Lane Field Revenue").

6.1.5.2 Repayment Upon Issuance of Lane Field Bonds. In the event that the Port issues bonds which are secured by a pledge of Lane Field Revenue (the "Lane Field Bonds"), the Port shall submit payment to the Agency in an amount equal to the lesser of fifty percent (50%) of the proceeds of the Lane Field Bonds or one hundred percent (100%) of the First Phase Advance within five (5) business days of the Port's receipt of the Proceeds from issuance of the Lane Field Bonds. Upon the Agency's receipt of the Port's payment in the amount stated in this Section 6.1.5.2, the remaining obligation of the Port if any, to repay the First Phase Advance from the Lane Field Revenues shall be subordinate to the Port's obligations with respect to repayment of the Lane Field Bonds.

6.1.5.3 Repayment Obligation Commencing July 1, 2013. Should exercise of the Lane Field Lease(s) option be delayed beyond June 30, 2013 such that the Lane Field Revenues are not available to repay the First Phase Advance by that date, the Port shall, commencing July 1, 2013, begin repaying the Agency

Eight Hundred and Fifty Thousand Dollars (\$850,000) annually out of Port general fund or other available revenues until such time as the Lane Field option is exercised and repayment may be made using the Lane Field Revenues as provided in Section 6.1.5.1. Once the repayment provided in this Section 6.1.5.3 is commenced, the Port shall thereafter, and subject to Section 6.1.5.2, annually, upon the anniversary date of the initial payment, pay the Agency the greater of: (a) Eight Hundred and Fifty Thousand Dollars (\$850,000) out of the Port's general fund or other available revenues or (b) not less than fifty percent (50%) of the Lane Field Revenues, until the First Phase Advance is repaid in full, through the annual payment, prepayment, other proceeds or any combination of such payments. To the extent repayment is paid from the Port's general fund revenue, the annual payment of Eight Hundred and Fifty Thousand Dollars (\$850,000) shall be subordinate to certain existing and outstanding debts and obligations of the Port in the total amount not to exceed \$121,594,306.29 with associated annual debt service payments in the total amount not to exceed \$8,310,229.16, as set forth in the "Debt and Annual Debt Service Obligations of the Port" attached hereto as Attachment "D" and incorporated herein by this reference. The Parties acknowledge and agree that the Port's general revenue fund from which repayment may be made does not include terminal special facility fees received by the Port in connection with cruise ship passengers.

6.1.6 Setback Park/Plaza. As part of the First Phase, the Port shall cause the Design and Construction of Setback Park/Plaza in accordance with the terms and conditions of the coastal development permit. Commencement of Construction of Setback Park/Plaza shall occur no later than the time of substantial completion of the other First Phase improvements subject to adjustment as required in the First Phase coastal development permit. The Port has required the Lane Field developer to fund the Design and Construction of Setback Park/Plaza. If, and only if, the Lane Field developer fails to timely Design and commence Construction of Setback Park/Plaza, the Port shall Design and commence Construction of Setback Park/Plaza, and the Port and the Agency shall each divide the actual Project Costs of Setback Park/Plaza equally, subject to the provisions of this Section 6.1.6. The Parties estimate that the Project Costs for Setback Park/Plaza will be approximately Six Million (\$6,000,000) Dollars.

6.1.6.1 The Port's Advance of Setback Park/Plaza Project Costs. In the event the Lane Field developer does not timely Design and commence Construction of Setback Park/Plaza,

the Port shall advance the funds to Design and commence Construction of Setback Park/Plaza, unless the Agency agrees otherwise in writing, and shall cause its Construction as provided in the coastal development permit.

6.1.6.2 Payment of Agency's Share of Project Costs for Setback Park/Plaza. In the event that the Port advances the Project Costs for Setback Park/Plaza, the Port shall be entitled to deduct the Agency's share of the Project Costs for Setback Park/Plaza from the annual payment the Port would otherwise have to make pursuant to Section 6.1.5.3, until such time as the Agency's equal share of the Project Costs for Setback Park/Plaza are repaid in full.

6.1.6.3 Reimbursement by the Port of the Agency's Share of the Project Costs for Setback Park/Plaza. If the Port advances the funds to Design and commence Construction of Setback Park/Plaza, but later recoups the costs of such Design and Construction from a future developer of Lane Field, the Port shall repay the Agency for any portion of the Project Costs for Setback Park/Plaza paid by the Agency to the Port, whether that payment was made through a cash payment or through a deduction from funds owing to the Agency from the Port as provided in Section 6.1.6.2.

6.1.7 Broadway Pier Surface Improvements. In addition to the First Phase Construction, the Agency, acting through CCDC, and subject to the Agency and the City making any required findings under applicable law, shall fund up to One Million Dollars (\$1,000,000) of the Design and Construction of the Broadway Pier Surface Improvements. The Agency's contribution to the Design costs shall not exceed One Hundred Fifty Thousand Dollars (\$150,000). Notwithstanding the foregoing, and provided the Port has not already entered into a Construction contract for the Broadway Pier Surface Improvements, the Port shall not be obligated to construct, and the Agency, acting through CCDC, shall not be obligated to fund the Broadway Pier Surface Improvements if the enhanced surface public improvement costs (including Design, material and installation costs) in the area east of the building exceed One Million Dollars (\$1,000,000). The Port shall present the Design for the Broadway Pier Surface Improvements to the Authority Board for Design review and comment. The Construction contract for the Broadway Pier Surface Improvements shall be administered by the Port and the Agency's payment for such improvements shall be deposited with the Port in installments as invoices are approved and paid by the

Port on the Construction contract for the Broadway Pier Surface Improvements.

6.1.8 Findings and Legally Required Acts. The obligations of the Parties to make any payments or to take any actions provided in this First Amendment are contingent upon the making of any legally required findings or the taking of any legally required actions, including, without limitation, compliance with California Health and Safety Code sections 33445 and 33679. Upon the making of all legally required findings, the payment obligations of the Agency under this First Amendment constitute an indebtedness of the Agency for the purposes of carrying out its Redevelopment Plan, which indebtedness is payable out of taxes that are levied by or for the benefit of taxing agencies in the Project Area and which are allocated to the Agency pursuant to Health and Safety Code section 33670(b).

6.1.9 Summary of Funding Plan. The anticipated Project Costs of the First Phase, and a summary of the financing plan for that Construction, is set forth in Attachment B to this First Amendment and incorporated by this reference. It is intended by the Parties that future phases of the Visionary Plan may utilize a similar funding plan as established by this First Amendment and reflected in Attachment B. However, funding for future phases of the Visionary Plan shall be subject to a separate amendment to the Authority Agreement.

3. Amendments to Section 7 (Maintenance) of the Authority Agreement
Section 7 of the Authority Agreement is hereby amended to read in its entirety as follows:

7.1 Maintenance of First Phase Improvements. For a term of thirty (30) years, commencing six (6) months after completion of the First Phase improvements, the Port shall assume responsibility for the maintenance of the First Phase improvements; provided, however, that the Port shall assume facility maintenance of, for example, public restrooms, immediately upon occupancy of the facility by the Port. Upon assumption of the responsibility for the maintenance of the First Phase Improvements, the Port shall maintain, or cause to be maintained, said improvements consistent with generally applicable maintenance standards for similar improvements. The Port shall provide the Parties with notice in writing that the Port has accepted the maintenance obligations of the First Phase improvements at the time it accepts those obligations.

7.2 Maintenance Reserve. The Port shall establish a separate maintenance reserve (the “Maintenance Reserve”) to pay for the current and Incremental Maintenance Costs of the First Phase improvements for a term of thirty (30) years.

7.2.1 Six (6) months after completion and the Port’s acceptance of the First Phase improvements, the Port shall allocate Four Hundred Thousand Dollars (\$400,000) to the Maintenance Reserve, escalated by three percent (3%) annually, each year for thirty (30) years, to cover the estimated Incremental Maintenance Costs for the First Phase improvements. Additionally, upon completion of the Design of Setback Park/Plaza described in Section 6.1.6, the Port’s obligation to annually fund the Maintenance Reserve shall be increased to cover the agreed upon Incremental Maintenance Costs of Setback Park/Plaza on the same terms and conditions as provided in this Section 7.2.1.

7.2.2 Six (6) months after the completion and the Port’s acceptance of the First Phase improvements, the Port shall allocate an additional One Hundred and Fifty Thousand Dollars (\$150,000) into the Maintenance Reserve, escalated by three percent (3%) annually, each year for thirty (30) years, to cover the current maintenance costs for the area covered by the First Phase improvements.

7.2.3 The Port shall only use the Maintenance Reserve for maintenance of the First Phase improvements, and no portion of the Maintenance Reserve shall be used to provide maintenance outside those areas covered by the First Phase, including, without limitation, areas subject to maintenance by the Port’s tenants.

7.34 Maintenance Reserve Accounting and Adjustments. The Port will provide the Agency, acting through CCDC, and the City an annual statement of balances including funds allocated and expenditures related to the Maintenance Reserve. The Port shall additionally present an accounting of the Maintenance Reserve to the Authority Board every three (3) years for review and comment. By no later than the first anniversary of the completion of Construction of the First Phase, the Parties shall meet to determine whether security shall be included in the Port’s maintenance responsibilities pursuant to this Section 7.

4. Amendments to Section 8 (Phasing) of the Authority Agreement. Section 8 of the Authority Agreement is hereby deleted and replaced in its entirety as follows:

8.1 Overall Phasing of the Visionary Plan. The Visionary Plan will be phased to allow completion based on funding. All phases shall provide for a world class waterfront, balancing: (a) cost management while maintaining quality; (b) acceptable traffic loads and adequate parking; (c) continuous Cruise Terminal access; and (d) flexibility to accommodate future infrastructure improvement needs and public access to the waterfront. A Construction phasing plan for future phases of the Visionary Plan shall be subject to a separate amendment to the Authority Agreement.

8.2 First Phase Construction. The First Phase shall be constructed consistent with the Design and Construction limits of the First Phase as recommended by the Authority, approved by the Parties and depicted in Attachment A to this First Amendment. The estimated total First Phase Project Costs, excluding Setback Park/Plaza, are Twenty Eight Million Six Hundred Thousand Dollars (\$28,600,000). The Port shall bid and be solely responsible for the administration of the Construction activities included within the First Phase. The Agency, acting through CCDC, shall deposit the Agency's share of the First Phase Project Costs and, as needed, the First Phase Advance, with the Port as required to administer the Construction contract for the First Phase. The President/CEO of the Port or designee, on behalf of the Port, and the President of CCDC or designee, on behalf of the Agency, are hereby authorized to execute a project administration agreement (the "First Phase Project Administration Agreement") between the Port and CCDC, on behalf of the Agency, to provide for the orderly disbursement of the funding for the Construction contract for the First Phase.

5. Amendments to Section 22 (Notices) of the Authority Agreement Section 22 of the Authority Agreement is amended to update the address information for CCDC as follows:

President and Chief Operating Officer
Centre City Development Corporation
401 "B" Street, Suite 400
San Diego, California 92101

6. No Other Amendments. Except as expressly amended by this First Amendment, the Authority Agreement and all its terms and conditions shall remain in full force and effect. In the event of conflict between this First Amendment and the Authority Agreement, the provisions of this First Amendment shall govern.

7. Effective Date. The First Amendment shall be effective when all of the following are true and correct: (1) the First Amendment has been duly approved by the City Council and signed by its authorized representative; (2) the First Amendment has been duly

approved by the Board of the Agency and signed by its authorized representative; (3) the First Amendment has been duly approved by the Board of CCDC and signed by its authorized representative; and (4) the First Amendment has been duly approved by the Board of Port Commissioners and signed by its authorized representative.

8. Counterparts This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, this First Amendment is executed by the City, the Agency, acting through CCDC, and the Port, pursuant to resolution numbers _____ and _____ respectively, authorizing the execution.

CITY OF SAN DIEGO

DATED: _____

By: _____

APPROVED AS TO FORM:

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

DATED: _____

By: _____

APPROVED AS TO FORM:

CENTRE CITY DEVELOPMENT
CORPORATION

DATED: _____

By: _____

APPROVED AS TO FORM:

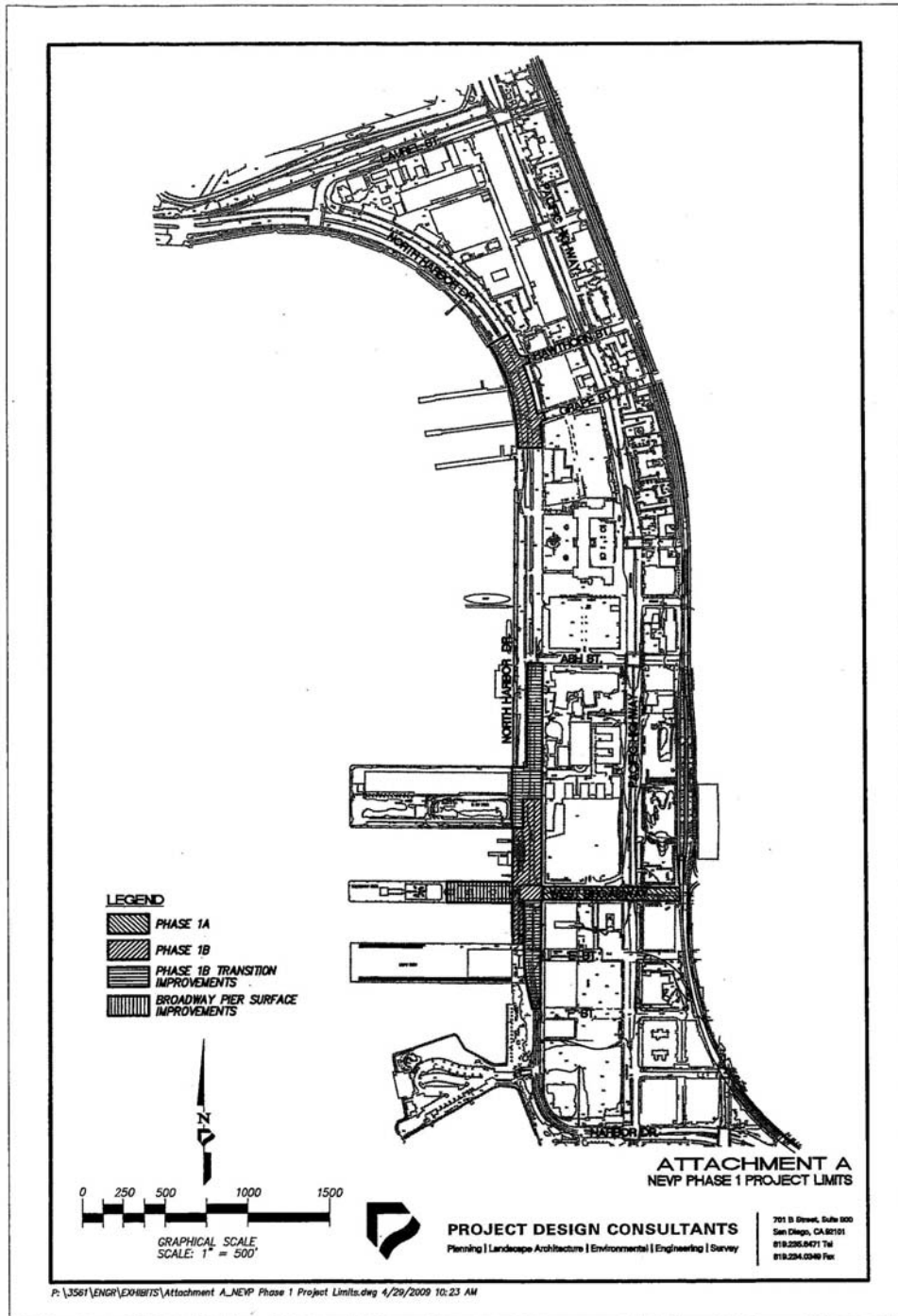
SAN DIEGO UNIFIED PORT DISTRICT

DATED: _____

By: _____

APPROVED AS TO FORM:

ATTACHMENT A



Attachment A

ATTACHMENT B

**NORTH EMBARCADERO VISIONARY PLAN
SUMMARY OF FIRST PHASE FUNDING PLAN**

	<u>Port</u>	<u>Agency</u>	<u>Total</u>
Total First Phase 1	<u>\$14.300</u>	<u>\$14.300</u>	<u>\$28.600</u>

- Port will receive a \$1.340 million credit against Port's share of capital cost of \$3.050 million for structural improvements made to Broadway Pier by Port, subject to verification of bid, contract and costs.
- Agency will advance the Port's remaining share relating to First Phase (\$12.96m), after deducting the \$1.340 million credit referenced above.
- Agency will provide a credit to Port's share of capital costs equal to the present value of 50% of annual incremental maintenance cost for a period of 30 years based on a 5% present value factor. Amount of credit is calculated to be \$4,383,862 based on annual incremental maintenance cost of \$400,000 with a 3% inflation factor, which amount will be increased to reflect the maintenance costs of the Setback Park/Plaza..
- Agency will fund \$1million for surface improvements on Broadway Pier as specified in the First Amendment. Payment will be made for Design (up to \$150,000) and Construction at the time actual costs are incurred.
- Port to repay Agency all the advance for the First Phase, with interest at the Agency's cost of funds pursuant to the JPA Agreement (4.77%).
- Agency advance secured and will be paid by 50% of any and all lease/income payments received by the Port from Lane Field. In the event the Lane Field lease is delayed beyond June 30, 2013, the Port shall begin annually repaying Agency advances at the lesser of \$850,000 or 50% of revenue received from Lane Field. Port may prepay any advances anytime.
- Six months after completion of the First Phase, Port will establish separate maintenance reserve and deposit each year an amount of \$400,000 escalated at 3% representing the incremental maintenance costs, which amount will be increased to reflect the maintenance costs of the Setback Park/Plaza. Port shall also deposit annually \$150,000 escalated 3% beginning six months after completion of the First Phase to same maintenance reserve representing the current costs for maintenance.
- Port will provide Agency an accounting of expenditures each year, and every three years to the JPA.
- It is intended that future phases of the NEVP may utilize the same financing method.

Summary of Funding, net of Credits:

	<u>Port</u>	<u>Agency</u>	<u>Total</u>
Total First Phase	\$14.300	\$14.300	\$28.600
Broadway Pier	(1.340)	1.340	0.00
Maintenance	(4.384)	4.384	0.00
Agency Advance	<u>(8.576)</u>	<u>8.576</u>	<u>0.00</u>
Net Total	0.00	\$28.600	\$28.600
 Broadway Pier Surface Improv.	 0.00	 \$1.000	 \$1.000

- Port will cause the Lane Field developer to Design and commence Construction of Setback Park/Plaza. If the Lane Field developer does not timely Design and commence Construction of Setback Park/Plaza, Port shall advance the funds for the Design and Construction such that the Construction shall commence at or before the time of substantial completion of the First Phase. Agency agrees to repay Port 50% of the Design and Construction costs. Port shall deduct such cost from the Agency Advance repayment until paid. The parties estimate that cost of Setback Park/Plaza will be approximately six (6) Million Dollars (\$6,000,000)
- If Port subsequently recoups Setback Park/Plaza Design and Construction costs from the Lane field developer, Port shall repay the Agency for its equal share of the costs.

ATTACHMENT C

[Attached Behind this Page]

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,
acting through the Centre City Development Corporation,

and

SAN DIEGO UNIFIED PORT DISTRICT

FIRST PHASE ADVANCE REPAYMENT AGREEMENT

Dated as of _____, 2011

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**FIRST PHASE ADVANCE
REPAYMENT AGREEMENT**

This **FIRST PHASE ADVANCE REPAYMENT AGREEMENT**, dated as of _____, 2011 (this "Repayment Agreement"), is made between the Redevelopment Agency of the City of San Diego, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Agency"), acting through the Centre City Development Corporation, a non-profit public benefit corporation ("CCDC"), and the San Diego Unified Port District, a public entity, duly organized and existing as a port district under and by virtue of the laws of the State of California (the "Port").

WITNESSETH:

WHEREAS, pursuant to the terms of that certain Joint Powers Agreement, dated as of April 9, 2007 (the "Original Agreement"), by and between the City of San Diego, a municipal corporation and charter city duly organized and existing under the laws of the State of California (the "City"), the Agency, acting through CCDC, and the Port, as amended and supplemented by that certain First Amendment to Joint Exercise of Powers Agreement, dated as of _____, 2011 (the "First Amendment," and, together with the Original Agreement, as supplemented by the First Amendment, and as it may be further amended and supplemented from time to time pursuant to its terms, the "Agreement"), between the City, the Agency, acting through CCDC, and the Port, the Port has requested that the Agency advance the Port's remaining share of the Project Costs of the First Phase (as such terms are defined in the Agreement), and the Agency, acting through CCDC, has agreed to fund such remaining Project Costs of the First Phase.

NOW, THEREFORE, in consideration of the Recitals and the mutual obligations herein set forth, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Definitions. Unless the context clearly otherwise requires, capitalized terms in this Repayment Agreement shall have the meanings specified in the Agreement.

SECTION 1.2 Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Repayment Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Repayment Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II FIRST PHASE ADVANCE; PAYMENTS

SECTION 2.1 First Phase Advance; Payments of Principal and Interest.

(a) Pursuant to Section 6.1.2 of the Agreement, the Agency, acting through CCDC, hereby advances to the Port, and the Port hereby borrows and accepts from the Agency, acting through CCDC, the First Phase Advance in the amount of Twelve Million Nine Hundred and Sixty Thousand Dollars (\$12,960,000).

(b) In consideration of the First Phase Advance, the Port agrees that the Port shall repay the principal of and interest on the First Phase Advance in accordance with the terms and provisions set forth in Section 6.1.5 of the Agreement. Principal of the First Phase Advance shall be payable in the amounts at the times set forth in the Agreement. Interest on the outstanding principal balance of the First Phase Advance shall be calculated at the interest rate and in accordance with the provisions specified in the Agreement and shall be payable at the times set forth in the Agreement.

(c) Each repayment to be made by the Port pursuant to this Repayment Agreement shall be in lawful money of the United States of America and shall be paid by the Port to the Agency at the offices of CCDC at the address specified in the Agreement or at such other address as CCDC shall specify in writing to the Port.

SECTION 2.2 Prepayment. Pursuant to Section 6.1.5 of the Agreement, the Port may prepay the First Phase Advance at any time, without penalty.

ARTICLE III EVENT OF DEFAULT AND REMEDIES

SECTION 3.1 Event of Default. Failure by the Port to pay in full any repayment when and as the same shall become due and payable hereunder shall constitute an event of default under this Repayment Agreement (hereinafter referred to as a "Default").

SECTION 3.2 Remedies. If a Default shall occur under this Repayment Agreement, then, and in each and every such case during the continuance of such Default, the Agency, itself or acting through CCDC, may take such action as it deems necessary or appropriate to collect amounts due hereunder, and may, without limiting the generality of the foregoing:

(a) Exercise any or all rights and remedies given hereby or available hereunder or given by or available under the Agreement securing the Port's performance hereunder;

(b) Following twenty (20) calendar days written notice to the Port, declare an amount equal to all amounts then due and payable with respect to the First Phase Advance, to be immediately due and payable under this Repayment Agreement, whereupon the same shall become immediately due and payable; and

(c) Take any action at law or in equity to collect the payment required hereunder then due, whether on the stated due date or by declaration of acceleration or otherwise.

SECTION 3.3 Discontinuance or Abandonment of Default Proceedings If any proceeding taken by the Agency, itself or acting through CCDC, on account of any Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Agency, itself or acting through CCDC, then and in every case the Agency, itself or acting through CCDC, and the Port shall be restored to their former position and rights hereunder, respectively, and all rights, remedies and powers of the Agency, itself or acting through CCDC, shall continue as though no such proceeding had taken place.

SECTION 3.4 Remedies Cumulative. No remedy conferred upon or reserved to the Agency, itself or acting through CCDC, hereby or now or hereafter existing at law or in equity or by statute shall be exclusive, but shall be cumulative with all others. Such remedies are not mutually exclusive and no election need be made among them, but any such remedy or any combination of such remedies may be pursued at the same time or from time to time so long as all amounts realized are properly applied and credited as provided herein. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the Agency, itself or acting through CCDC. In the event of any waiver of a Default hereunder, the parties shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any other or subsequent Default or impair any right arising as a result thereof.

SECTION 3.5 Application of Money Collected. Any amounts collected pursuant to action taken under this Article shall be applied first to the interest then due, then to the payment of principal.

SECTION 3.6 Attorneys' Fees and Other Expenses. If, as a result of the occurrence of a Default, the Agency, itself or acting through CCDC, employs attorneys or incurs other expenses for the collection of payments due hereunder, the Port will, on demand, reimburse the Agency, itself or acting through CCDC, for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

ARTICLE IV

MISCELLANEOUS

SECTION 4.1 **Amendments and Supplements.** This Repayment Agreement may be amended, modified or supplemented by a written agreement executed by the parties.

SECTION 4.2 **Time of the Essence; Non-Business Days.** Time shall be of the essence in this Repayment Agreement. When any action is provided for herein to be done on a day named or within a specified time period, and the day or the last day of the period falls on a day which is a Saturday, Sunday, or other day on which the offices of the Port are authorized or permitted by law to close ("Non-Business Day"), such action may be performed on the next ensuing day which is not a Non-Business Day with the same effect as though performed on the appointed day or within the specified period.

SECTION 4.3 **Binding Effect** This instrument shall inure to the benefit of and shall be binding upon the Agency, itself or acting through CCDC, and the Port and their respective successors and assigns.

SECTION 4.4 **Waiver of Personal Liability.** No member of the governing body of the Agency or CCDC or any officer, agent or employee of the Agency or CCDC or any member of the governing body of the Port or any officer, agent or employee of the Port shall be individually or personally liable for the repayment of the principal of or interest on the First Phase Advance or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Repayment Agreement; but nothing herein contained shall relieve any such member of the governing body of the Agency or CCDC or any officer, agent or employee of the Agency or CCDC or any member of the governing body of the Port or any officer, agent or employee of the Port from the performance of any official duty provided by law or by this Repayment Agreement.

SECTION 4.5 **Severability.** If any portion of this Repayment Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Repayment Agreement shall be deemed severable and shall not be affected thereby, and this Repayment Agreement shall remain valid, and the Agency, itself or acting through CCDC, shall retain all valid rights and benefits accorded to it under this Repayment Agreement and the Constitution and laws of the State of California.

SECTION 4.6 **Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all notices or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, mailed by first-class mail, postage prepaid or sent by electronic means, receipt of which shall be confirmed, and addressed in accordance with the provisions set forth in the Agreement.

SECTION 4.7 **Term.** Except as otherwise provided herein, this Repayment Agreement shall remain in full force and effect from the date of execution hereof until the First Phase Advance shall have been repaid in full in accordance with the provisions of the Agreement.

SECTION 4.8 **Counterparts.** This Repayment Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

SECTION 4.9 **Governing Law.** This Repayment Agreement shall be governed by and construed according to the laws of the State of California applicable to contracts made and performed within the State of California.

[Signatures on following page]

IN WITNESS WHEREOF, this Repayment Agreement is executed by CCDC and the Agency and the Port, pursuant to resolution number _____ and resolution number _____ respectively, authorizing the execution hereof.

DATED: _____

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____

APPROVED AS TO FORM:

DATED: _____

CENTRE CITY DEVELOPMENT
CORPORATION

By: _____

APPROVED AS TO FORM:

DATED: _____

SAN DIEGO UNIFIED PORT DISTRICT

By: _____

APPROVED AS TO FORM:

ATTACHMENT D

SAN DIEGO UNIFIED PORT DISTRICT

Outstanding Debt and Obligations

District Clerk Doc. No.	Description	Outstanding Debt as of 3-31-09	Annual P & I
37941	Convention Center	\$27,000,000.00	\$4,500,000.00
47940	SDCRAA - \$50 M	\$46,665,719.46	\$307,043.75
45268	SDCRAA - Pond 20	\$1,456,077.78	\$35,717.41
48385 & 48388	Series A Bonds	\$18,868,373.25	\$2,093,550.00
48385 & 48388	Series B Bonds	<u>\$27,604,135.80</u>	<u>\$1,373,918.00</u>
	Total	<u>\$121,594,306.29</u>	<u>\$8,310,229.16</u>