

REIMBURSEMENT AGREEMENT FOR NORTH EMBARCADERO
VISIONARY PLAN PUBLIC IMPROVEMENTS

THIS REIMBURSEMENT AGREEMENT FOR NORTH EMBARCADERO VISIONARY PLAN PUBLIC IMPROVEMENTS (“Agreement”) is dated as of _____, 2018 for reference purposes only and is entered into between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“Port”) and LFS Development, LLC, a Delaware limited liability company (“Tenant”) (collectively, the “Parties” and individually, a “Party”), for the Port to reimburse funds to the Tenant for certain improvements constructed by Tenant pursuant to that certain lease dated May 4, 2016 by and between the Port and Tenant (District Clerk No. 64976) (the “Lease”) for that certain property totaling approximately 69,278 square feet of land area located south of the southernmost edge of the prolongation of “C” Street, on the north side of Broadway between North Harbor Drive and Pacific Highway in the City of San Diego (“City”), California as more particularly described in the Lease, and also commonly known as Lane Field South (“Property”).

RECITALS

- A. The Port is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1 (“Port Act”).
- B. The Port holds certain property located in the City in trust for the State of California, including the Property.
- C. On April 9, 2007, the City, the City of San Diego Redevelopment Agency (“Redevelopment Agency”), acting through Centre City Development Corporation (“CCDC”), and the Port created and established the North Embarcadero Alliance Joint Powers Authority (the “JPA”) through the execution of a Joint Exercise of Powers Agreement (the “Authority Agreement”) to implement the North Embarcadero Visionary Plan (the “NEVP”) and to exercise the powers described in the Authority Agreement.
- D. On January 8, 2008, the Port approved a Coastal Development Permit (“CDP”) (No. 2008-01) for a development that included a setback park/plaza along West Broadway which was an integral component of implementing NEVP as originally designed in a document known as the NEVP Schematic Design Documents – 100% Corrections dated June 1, 2005 and approved by the Board of Port Commissioners (“Board”) of the Port on October 11, 2005.
- E. As set forth in the Lane Field Public Access Program, as revised August 20, 2008, the Lane Field project is a fundamental part of the NEVP, integrating the public realm improvements along Broadway, Harbor Drive and Pacific Highway and extending C Street west of Pacific Highway to Harbor Drive.

- F. After hearing the appeal of the Port-issued CDP, on January 8, 2009 the California Coastal Commission (“CCC”) authorized issuance of a CDP for the development of Lane Field North and Lane Field South that included the creation of a public pedestrian landscaped park/plaza along the Broadway Street frontage in front of retail stores and restaurants as well as public terraces at the fifth floor (“CCC CDP”).
- G. On April 13, 2011, the NEVP Phase 1 CDP was issued to the Port authorizing the development, among other projects, of improvements along West Broadway Street from North Harbor Drive east to the railroad tracks located between Pacific Highway and Kettner, including landscaping and lighting.
- H. On May 4, 2016, the Port and Tenant entered into a sixty-six year Lease for the Property.
- I. Section 5.1 of the Lease requires Tenant to construct an approximately 0.41 acre, 55 foot setback park from West Broadway at Tenant’s expense that shall be owned and maintained by the Port (“Broadway Setback Park”).
- J. Section 5.1(a) of the Lease also gives Tenant the right to develop underground structured parking beneath the Broadway Setback Park to the extent required, if necessary, to accommodate all project parking requirements plus the 271 public parking spaces required by the CCC CDP (“271 Parking Spaces”).
- K. Tenant has the right to occupy and use the Broadway Setback Park consistent with the Port’s permitting policies for public parks.
- L. The Broadway Setback Park and 271 Parking Spaces are collectively referred to herein, as the “South Public Improvements”.
- M. Tenant represents that on February 22, 2017, Tenant paid the City development impact fees in the amount of \$2,181,407.74 as required by the San Diego Municipal Code for Lane Field South (“DIF Amount”).
- N. Contribution from the City’s Downtown Development Impact Fee Fund for the Broadway Setback Park is provided in the 2015 Downtown Public Facilities Financing Plan (“PFFP”) under Project P-13 “Downtown Park Acquisition and Development”, which authorizes funding for acquisition, design and construction of up to 5.7 acres of public open space and park facilities to include “mini-parks, pocket parks and plazas.”
- O. Contribution from the City’s Downtown Development Impact Fee Fund for the 271 Parking Spaces is provided in the PFFP under Project T-7 “Below-Grade Parking Structures”. Part of the parking structure is located under the Broadway Setback Park. Pursuant to Section 2 of the Lease, and consistent with the CCC CDP, 271 spaces must be available to the general public.

- P. The Port and the City are concurrently entering into a Contribution Agreement for North Embarcadero Visionary Plan Public Improvements of even date herewith (“Contribution Agreement”) pursuant to which the City shall contribute the DIF Amount to the Port in an amount not to exceed \$2,181,407.74. The City is contributing DIF to the Port because the amount paid in DIF is fixed and is duplicative of impacts mitigated by the construction of the South Public Improvements. NEVP contemplated cost sharing and contribution of public improvements.
- Q. Section 26(a) of the Lease required Tenant and its contractors, subcontractors, agents, or affiliates to pay prevailing wages to all persons and entities subject to California’s prevailing wage laws who provide any labor, services, equipment or materials in connection with any construction or work of improvement on the Property or areas occupied by Tenant.
- R. Tenant has represented to the Port and the City that it paid prevailing wages and entered into a Memorandum of Understanding with UNITE HERE Local 30 for labor representation and a Skilled Workforce Supply and Training Agreement or “PLA”.
- S. Tenant has represented to the Port that any portion of the DIF Amount that the Port delivers to Tenant shall be used by the Tenant for improvements to or improvements that directly benefit the Property.
- T. The Parties herein now desire to define the terms and conditions under which the Port shall reimburse the DIF Amount to Tenant for the South Public Improvements.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Port and Tenant agree as follows:

1. The Recitals are hereby incorporated by reference.
2. Upon completion of the South Public Improvements, Tenant shall notify Port and Port shall conduct an inspection within ten (10) days of Port’s receipt of Tenant’s notice to confirm that the South Public Improvements are complete in accordance with the Port’s approvals (“Site Inspection”). If the Port determines during the Site Inspection that the South Public Improvements are complete, the Port shall deliver a letter to the Tenant within seven (7) days of the Site Inspection confirming that the South Public Improvements are complete in accordance with the Port’s approvals (“Confirmation Letter”). Port shall deliver to the City the Confirmation Letter and a request for payment of the DIF Amount paid by Tenant to the City in the amount of \$2,181,407.74 no later than two (2) days after the Port’s delivery of the Confirmation Letter to the Tenant. The \$2,181,407.74 represents the City’s maximum total contribution for the South Public Improvements.

3. Upon the Port's receipt of any portion of the DIF Amount from the City pursuant to the Contribution Agreement, the Port shall reimburse such portion of the DIF Amount actually received from the City to the Tenant within thirty (30) days of the Port's receipt of the City's deposit. The Port shall not be required to pay Tenant any contribution received from the City pursuant to the Contribution Agreement which would result in the Port paying the Tenant a total amount in excess of \$2,181,407.74 under this Agreement, regardless of whether such contribution is paid by the City to the Port in error or otherwise.
4. Tenant shall use no more than fifty percent (50%) of the total DIF Amount that the Port delivers to the Tenant under this Agreement for tenant improvements that directly benefit the Property ("Tenant Improvements") and the remainder of the total DIF Amount not used for Tenant Improvements for public facing improvements ("Public Facing Improvements", together with the Tenant Improvements, the "Project Improvements"). Tenant shall present proposed Project Improvements for Port staff review and approval in conformance with Port's Board Policy No. 357 prior to Tenant's expenditure of the DIF Amount for such Project Improvements and write "Lane Field DIF Improvements" on the application submitted to the Port under this Section 4.
5. The designated contact person on the Tenant's behalf for any issues related to this Agreement is Alex Guyott, 600 West Broadway, Suite 660 San Diego, CA 92101, 619-867-0501. The designated contact person on Port's behalf for any issues related to this Agreement shall be Tony Gordon, Director, Real Estate, 3165 Pacific Highway, San Diego, CA 92101, (619) 686-6287, 3165 Pacific Highway, San Diego, CA 92101. Either Party may change its designated contact person under this Agreement by delivering written notice to the other Party via certified United States Mail (return receipt requested), which will be effective three days after deposit in the United States Mail.
6. The effectiveness of this Agreement is subject to the approval of the Board, which approval may be withheld, conditioned or denied in the Board's sole and absolute discretion.
7. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
8. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California.
9. All terms, conditions, and provisions hereof shall inure to and shall bind each of the Parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

10. For purposes of this Agreement, the relationship of the Parties is that of independent entities and not as agents of each other or as joint ventures or partners. The Parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations. Nothing in this Agreement shall be interpreted as granting, conveying, or providing the Tenant with any interest in any portion the Property or the South Public Improvements other than those interests provided in the Lease.
11. This Agreement is not intended to create duties or obligations to, or rights in, third parties to this Agreement or affect the legal liability of the Parties to this Agreement to third parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons or entities other than Port and Tenant and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to any Party to this Agreement, nor shall any provisions give any third parties any right of subrogation or action over or against any Party to this Agreement.
12. By entering into this Agreement, Tenant acknowledges and agrees that this Agreement is limited to the South Public Improvements and the Port's reimbursement to the Tenant of any contribution the Port actually receives from the City of the DIF Amount pursuant to the Contribution Agreement and the Port expressly reserves any rights it may have with respect to the receipt of development impact fees on any other portion of Tenant's development on the Property or on any other development within the Port's jurisdiction.
13. The waiver or failure to enforce any provision of this Agreement by a Party will not operate as a waiver of such Party's right to enforce future defaults or breaches of any such provision or any other provision of this Agreement.
14. This Agreement shall expire upon the earlier of: (a) Port's receipt of the deposit of \$2,181,407.74 in one or more installments from the City for the DIF Amount paid by Tenant and the Port's reimbursement to Tenant of \$2,181,407.74 in one or more installments for the DIF Amount; or (b) five (5) years from the Effective Date, unless terminated earlier pursuant to the terms of this Agreement; provided, however, this Agreement shall not expire prior to Tenant's completion of the Project Improvements in the total amount of any portion of the DIF Amount that the Port reimburses to the Tenant under this Agreement. Upon expiration of the Agreement, neither Party shall have any further rights, remedies or obligations to the other Party under this Agreement and the Parties shall each be relieved and discharged from all further responsibility or liability under this Agreement.

15. The Parties sole remedy under this Agreement for any breach of this Agreement by the other Party shall be to terminate this Agreement without damages of any kind but shall not preclude either Party from enforcing specific performance against the other Party for any obligations under this Agreement.
16. This Agreement constitutes the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof; provided, however, it is not the intent of the Parties that the Lease be superseded by this Agreement.
17. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each party has signed one such counterpart.
18. The Parties acknowledge that this Agreement has been agreed to by both the Parties, that both Port and Tenant have consulted with attorneys with respect to the terms of this Agreement and that no presumption shall be created against the drafting party. Any deletion of language from this Agreement prior to its execution by Port and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Agreement, any approval or consent to be given by Port may be given or withheld in Port's sole discretion.
19. The effectiveness of this Agreement is contingent upon the satisfaction of the following: (i) approval by the Board and execution by both the Port and the Tenant of this Agreement; and (ii) approval by the Board and City Council of the Contribution Agreement and execution of the Contribution Agreement by both the City and Port. The date when both of these conditions have been satisfied shall be referred to as the effective date ("Effective Date").

IN WITNESS WHEREOF, this Agreement is signed and entered into by the authorized representatives of the Port and Tenant effective as of the Effective Date.

APPROVED AS TO FORM AND
LEGALITY:

GENERAL COUNSEL

By: _____
Assistant/Deputy

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Name: _____
Its: _____

LFS DEVELOPMENT, LLC,
A DELAWARE LIMITED LIABILITY
COMPANY

By: _____
Name: _____
Its: _____