

File No. 160276

Committee Item No. 6

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget & Finance Sub-Committee

Date April 20, 2016

Board of Supervisors Meeting

Date _____

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Completed by: Linda Wong Date April 15, 2016
 Completed by: Linda Wong Date _____

1 [Master Lease Amendment, Sublease Amendment - AMB Pier One LLC, Port - Pier 1]

2
3 **Resolution approving the Second Amendment to Lease No. L-12838 at Pier 1 with AMB**
4 **Pier One LLC, a California limited liability company, including an option to extend for**
5 **an additional fifteen-year term; and approving the First Amendment to the Port of San**
6 **Francisco sublease at Pier 1; each as approved by the Port Commission.**

7
8 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter
9 Sections 4.114 and B3.581 empower the San Francisco Port Commission ("Port
10 Commission") with the power and duty to use, conduct, operate, maintain, manage, regulate
11 and control the lands within Port Commission jurisdiction; and

12 WHEREAS, On March 9, 1999, through Resolution No. 99-17, the Port Commission
13 adopted a Final Negative Declaration and mitigation and monitoring program under the
14 California Environmental Quality Act ("CEQA") and approved the terms of the Pier 1
15 Development Agreement and a fifty (50) year lease with AMB Property Corporation ("Master
16 Lease") which included, among other terms: a sublease to the Port for a term coterminous
17 with the term of the Master Lease including expansion and purchase options ("Port
18 Sublease"); significant investment in rehabilitation of the pier and seismic upgrades to
19 preserve the historic pier; obligations to maintain and repair the substructure and seawall
20 beneath the pier; creation of public access, office space and a casual dining opportunity;
21 support of maritime commerce in the form of high quality maritime office space for the Port
22 and other maritime businesses; and related economic terms including use of historic tax
23 credits and payment of minimum rent (without any adjustment or escalations during the term)
24 and participation rent; and

1 WHEREAS, Although the Master Lease and Port Sublease are for predominantly
2 maritime uses, the Port Commission sought approval by the Board of Supervisors under
3 Charter, Section 9.118 since the term of the leases exceeded ten years, and, in May 1999,
4 through Resolution No. 329-99, the Board of Supervisors adopted the Final Negative
5 Declaration and mitigation and monitoring program and approved the form of Master Lease
6 and Port Sublease; and

7 WHEREAS, The Master Lease with AMB Property, L.P., (Lease No. L-12838)
8 commenced on August 2, 1999; the Port Sublease commenced on February 1, 2001; and
9 both will expire on August 2, 2049; and

10 WHEREAS, In November 2000, AMB Property, L.P., assigned its rights under the
11 Master Lease to AMB Pier One, LLC, ("Tenant") and the AMB entities entered into a lease
12 back arrangement with AMB Property, L.P., (now Prologis) becoming the subtenant under a
13 sublease expiring on December 10, 2020 (subject to several extension options) ("Prologis
14 Sublease"); and

15 WHEREAS, Tenant fully performed on the Pier 1 Development Agreement and the
16 Port's Chief Harbor Engineer ("CHE") issued a Certificate of Completion for the pier
17 rehabilitation in November 7, 2002; and

18 WHEREAS, Tenant has proposed one (1) extension term at Tenant's sole option for an
19 additional fifteen (15) year term until August 1, 2064, upon the expiration of the Master Lease
20 in 2049 ("Extension Option") in the form of a Second Amendment to the Master Lease
21 ("Second Amendment"); and

22 WHEREAS, As material consideration for the Extension Option, Tenant has agreed to
23 the following through the Second Amendment to the Master Lease, amendment to the
24 Prologis Sublease and First Amendment to the Port Sublease; which provide substantial
25 benefits to the Port:

1 A. Master Lease Second Amendment:

2 (i) Guarantee an additional \$500,000 in participation rent to the Port by requiring
3 Prologis to consolidate its subleased premises and putting additional sublease space on the
4 market now to take advantage of favorable current market rates;

5 (ii) Agree to permit and implement, at its cost, certain sea level rise protection
6 measures if required by the CHE to protect health and safety;

7 (iii) Agree to termination of the Master Lease without cost or liability to Port should the
8 CHE determine that there is an ongoing threat to human health and safety due to sea level
9 rise;

10 (iv) Agree to consider implementing more extraordinary flood protection measures such
11 as raising the deck level in return for early exercise of the Extension Option and subject to
12 project feasibility;

13 (v) Remain responsible for all leasing, management and capital required to maintain
14 the premises during the extension term;

15 (vi) Agree to pay fair market value minimum rent during the extension term, including
16 automatic escalators and in no event less than the current minimum rent;

17 (vii) Continue to pay 50% participation rent of all sublease net income; and

18 (vii) Comply with current City requirements;

19 B. Prologis Sublease Amendment:

20 (i) Extend Prologis's current sublease due to expire in 2021, for an additional 20-year
21 term until 2040, eliminate Prologis's right to terminate and add an additional option to renew
22 the sublease subject to Tenant's exercise of the Master Lease Extension Option;

23 (ii) By 2021, invest \$10 -12 million in capital for Prologis' Pier One world headquarters
24 in the subleased premises; and

25 (iii) Comply with the current City requirements;

1 C. Port Sublease First Amendment:

2 (i) Grant the Port a one-time early termination right in 2031, for any reason, and, if not
3 exercised, grant the Port a 15-year extension option in the event Tenant exercises the Master
4 Lease Extension Option; and

5 WHEREAS, All other terms of the Master Lease and Port Sublease will remain in
6 effect; and

7 WHEREAS, Copies of the fully executed Master Lease; Master Lease First
8 Amendment and Port Sublease, and the form of Port Sublease First Amendment;, and form of
9 Master Lease Second Amendment are on file with the Clerk of the Board of Supervisors in
10 File No. 160276; and

11 WHEREAS, The proposed two amendments (including the proposed interior
12 alterations) do not change or intensify the use of Pier 1 and do not qualify as a project subject
13 to CEQA review; and

14 WHEREAS, The Port Commission approved the Second Amendment to the Master
15 Lease and the First Amendment to the Port Sublease on February 9, 2016, by Resolution
16 No. 16-07; and

17 WHEREAS, San Francisco Charter, Section 9.118 requires Board of Supervisors'
18 approval of the modification, amendment or termination of any lease which when entered into
19 was for a period of ten or more years; now, therefore, be it

20 RESOLVED, That the Board of Supervisors approves the Second Amendment to the
21 Master Lease and the First Amendment to the Port Sublease; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
23 Director of the Port (the "Executive Director") to execute the amendments in a form approved
24 by the City Attorney and in substantially the form on file with the Clerk of the Board of
25 Supervisors in File No. 160276; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
2 Director to enter into any additions, amendments or other modifications to the Second
3 Amendment and the First Amendment (including, without limitation, preparation and
4 attachment of, or changes to, any or all of the exhibits and ancillary agreements) that the
5 Executive Director, in consultation with the City Attorney, determines when taken as a whole,
6 are in the best interest of the Port, do not materially increase the obligations or liabilities of the
7 Port or City or materially decrease the public benefits accruing to the Port, and are necessary
8 or advisable to complete the transactions contemplated and effectuate the purpose and intent
9 of this Resolution, such determination to be conclusively evidenced by the execution and
10 delivery by the Executive Director of any such documents; and, be it

11 FURTHER RESOLVED, That within thirty (30) days of the Second Amendment to the
12 Master Lease and the First Amendment to the Port Sublease being fully executed by all
13 parties, the Port shall provide copies of the agreements to the Clerk of the Board for inclusion
14 into the official file.

<p>Item 6 File 16-0276</p>	<p>Department: Port Commission (Port)</p>
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve (1) the 2nd amendment to the Master Lease between the Port and AMB Pier One; and (2) the 1st amendment to the sublease between AMB Pier One and the Port.

Key Points

- AMB Property renovated Pier One under a development agreement with the Port, completing renovations in 2001. AMB Property assigned the Master Lease to its wholly-owned subsidiary, AMB Pier One, in 2000. AMB Property subsequently merged with and was renamed Prologis. Under a 50-year Master Lease Agreement, AMB Pier One subleased space to (a) Prologis, (b) the Port, and (c) third party tenants. AMB Pier One pays the Port base rent of \$1.3 million per year over the 50-year Master Lease term and participation rent for all sublease rent exceeding \$37 per square foot on average.
- Under the proposed 2nd amendment to the Master Lease, AMB Pier One would (a) have the option to extend by 15 years, extending the lease end-date from August 1, 2049 to August 1, 2064; and (b) pay the Port participation rent of \$500,000. Prologis would invest \$10 million to renovate the space that it subleases from AMB Pier One under the Master Lease.
- Under the proposed 1st amendment to the sublease between AMB Pier One and the Port, the Port would (1) a right to terminate the sublease as of February 1, 2031, and (2) an option to extend the sublease for an additional 15 years to expire on August 1, 2064, which coincides with the expiration date of the AMB Master Lease.

Fiscal Impact

- AMB Pier One paid the Port \$6,808,538 in total rent over the previous five-year period from 2011 to 2015, including \$100,823 in participation rent. The Port did not receive participation rent in 2013, 2014, or 2015 because no sublease tenants paid rent above \$40 per square foot in those years.
- The estimated rent to be paid by AMB Pier One to the Port is \$7,207,035 over the next five-year period from 2016 through 2020, which includes approximately \$500,000 in guaranteed participation rent.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(c) states that any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

BACKGROUND

In 1999, the Port of San Francisco (Port) entered into a development agreement and Master Lease with AMB Property, LP¹ (AMB Property) for the development and long-term leasing of Pier One by AMB Property. Under the development agreement, AMB Property, LP renovated the Pier, shed, bulkhead, water and land surface area, and all existing buildings and structures located at the Pier. Renovation of Pier One was completed in 2001.

Under the Master Lease, AMB Property leased Pier One as the master tenant for a 50-year term expiring on August 1, 2049. AMB Property and the Port also had a sublease agreement for the Port to sublease office space at Pier One to be used by the Port for its headquarters. The sublease between AMB Property and the Port expires on August 1, 2049 to coincide with the expiration of the Master Lease. Both the Master Lease agreement and the Port sublease agreement were approved by the Board of Supervisors in 1999.

Under the Master Lease, AMB Property pays annual rent to the Port of \$1,341,543 per year over the 50-year term of the lease.² In addition, AMB Property pays participation rent to the Port, which is calculated as 50% of rent from any subleases leased at a rate of more than an average of \$37 per square foot.³

In 2000, the Port and AMB Property executed the first amendment to the Master Lease to make revisions regarding historic tax credits, participation in sale proceeds, and rent under the Port sublease. This amendment to the Master Lease was not subject to approval by the Board of Supervisors.

In 2000, the Port also consented to AMB Property assignment of its interest in the Master Lease to its wholly-owned subsidiary, AMB Pier One LLC (AMB Pier One). In 2011, the general partner of AMB Property, AMB Property Corporation, merged with Prologis, Inc. As a result of the merger, AMB Property changed its name to Prologis, LP (Prologis). As a result, AMB Pier One is the wholly-owned subsidiary of Prologis.

¹ In 2011, AMB merged with Prologis, a company specializing in industrial real estate.

² Rent of \$1,341,543 to the Port was based on a formula in which AMB paid all construction costs to develop Pier One and received a developer's return on equity of 11 percent on allowable construction costs. According to the formula, rent of \$1,341,543 equaled rental income to AMB from subtenants of \$5,583,670 less the developer's return on equity of \$4,242,127 (equal to 11 percent of allowable construction costs of \$38,564,698).

³ Under the lease's participation rent structure, any net rent from subleases above an average of \$37 per square foot is divided equally between the Port and AMB.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve (1) the second amendment to the Master Lease between the Port and AMB Pier One; and (2) the first amendment to the sublease between AMB Pier One and the Port.

Under the existing Master Lease, AMB Pier One leases 151,606 square feet at Pier One as the master tenant for a 50-year term, commencing in 1999 and expiring on August 1, 2049. AMB Pier One has the following subleases:

1. Prologis subleases approximately 51,259 square feet of office space in Bay 1A and Bay 1B of Pier One for its headquarters;
2. The Port subleases approximately 52,304 square feet of office space for its headquarters;
3. Third party tenants sublease approximately 48,043 square feet of space.

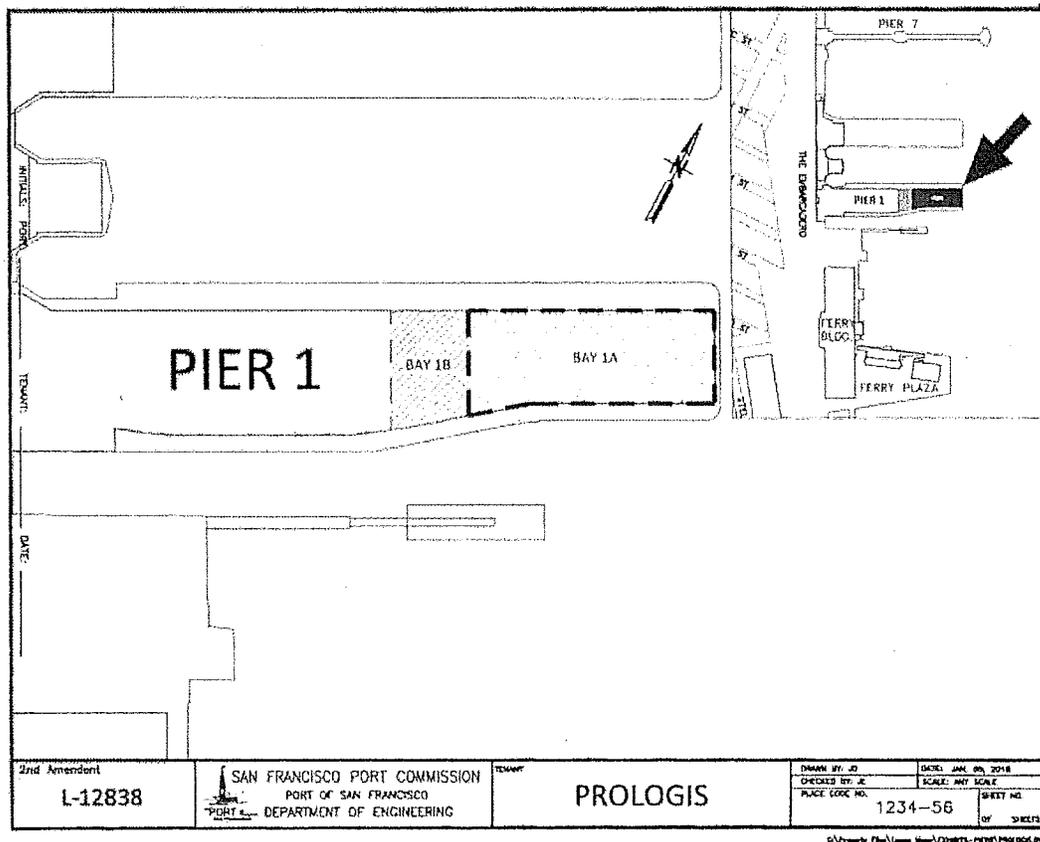
2nd Amendment to Master Lease

AMB Pier One requested the Port to provide an option to extend the Master Lease by an additional 15 years, potentially extending the lease termination date from August 1, 2049 to August 1, 2064.

Under the proposed 2nd amendment, AMB Pier One and Prologis would amend the Prologis sublease to give Prologis options to extend its sublease to August 1, 2064. Prologis would invest \$10 million for the renovation of Bay 1A, of which at least \$2 million would be dedicated to core and shell upgrades, including increasing restroom capacity and replacing major components of the HVAC (heating, ventilation, air conditioning) system. In order to renovate Bay 1A, Prologis would temporarily consolidate its offices in Bay 1B. Once the renovations are complete, Prologis would move back to Bay 1A and actively market Bay 1B to third party subtenants.

Exhibit 1 below shows Bay 1A and Bay 1B at Pier One.

Exhibit 1: Location of Bay 1A and Bay 1B at Pier One



The proposed 2nd amendment:

- Gives AMB Pier One the option to extend the Master Lease by 15 years from August 2, 2049 to August 1, 2064;
- Increases rent paid by AMB Pier One to the Port from the current rent of \$1,341,543 to fair market rent at the time that the option to extend the Master Lease is exercised;
- Requires AMB Pier One to pay the Port \$500,000 in additional participation rent; and
- Requires AMB Pier One to institute flood protection measures in the case of sea level rise.
- Requires AMB Pier One to continue to pay 50% of the net income to the Port during the option period.
- Requires AMB Pier One to continue to be responsible for all management, leasing, maintenance, repair, capital and insurance for the property during the option period.

Additional Participation Rent

Prologis currently subleases 51,259 square feet of space in Bay 1A and Bay 1B under the sublease with AMB Pier One. Under the proposed 2nd amendment, Prologis would sublease 40,000 square feet of space in Bay 1A and relinquish 11,259 square feet of space in Bay 1B, once renovations are completed. According to Mr. Jay Edwards, Senior Real Property Manager at the Port, because Prologis will relinquish its space in Bay 1B, reducing its square footage by 11,259 square feet, which will then be marketed to new subtenants, the Port would be at risk of losing participation rent during the time it takes to sublease the space. To offset potential lost participation rent, the Port negotiated with AMB Pier One to pay the Port \$500,000 in additional participation rent.⁴ Additional participation rent will be paid in quarterly installments of \$31,250 over a four year period.

Pier Flood Protection Measures

If at any time during the Master Lease term, the Port's Chief Harbor Engineer determines that there is a need to institute flood protection measures to protect Pier One from a significant risk of flooding or other damage related to sea level rise, AMB Pier will be responsible to implement flood protection measures. These flood protection measures may include: (1) temporary public access closures, sandbagging or other temporary measures, (2) waterproofing or relocation of utility infrastructure, or (3) short perimeter walls. The Port shall not be responsible for any cost related to flood protection measures. AMB Pier One may also propose additional improvements that are not within the current scope of the potential flood protection measures at their own cost, such as raising first floor elevations or rebuilding pier structure elements to address sea level rise. AMB Pier One will develop any plans for flood protection measures, which are subject to approval by the Chief Harbor Engineer.

1st Amendment to Port Sublease

The proposed resolution will also amend the sublease agreement between AMB Pier One and the Port to provide the Port (1) a right to terminate the sublease as of February 1, 2031, and (2) an option to extend the sublease for an additional 15 years to expire on August 1, 2064, which coincides with the expiration date of the AMB Pier One Master Lease.

FISCAL IMPACT

As shown in Table 1 below, AMB Pier One paid the Port \$6,808,538 in total rent from 2011 to 2015, including \$100,823 in participation rent. The Port did not receive participation rent in 2013, 2014, or 2015 because no sublease tenants paid rent above \$40 per square foot in those years.

⁴ The additional \$500,000 in participation rent is based on the anticipated fair market value of \$67 per square foot net of operating expenses. The Port determined this amount by comparing other leases it holds at Piers 3 and 5.

Table 1: Total Rent Paid to Port by AMB Pier One through 2015

Year	Ground Rent	Participation Rent	Total
2011	\$1,341,543	\$43,605	\$1,385,148
2012	1,341,543	57,218	1,398,761
2013	1,341,543	0	1,341,543
2014	1,341,543	0	1,341,543
2015	1,341,543	0	1,341,543
Subtotal	\$ 6,707,715	\$100,823	\$6,808,538

As shown in Table 2 below, the estimated rent to be paid by AMB Pier One to the Port is \$7,207,035 from 2016 through 2020, which includes approximately \$500,000 in guaranteed participation rent. According to Mr. Edwards, the Port can only forecast rents paid through the year 2020 because changes in the commercial real estate market prevent forecasting rents beyond this period.

Table 2: Total Rent to be Paid by AMB Pier One to Port through 2020

Year	Ground Rent	Participation Rent	Total
2016	\$1,341,543	\$0	\$1,341,543
2017	1,341,543	49,932	1,391,475
2018	1,341,543	149,796	1,491,339
2019	1,341,543	149,796	1,491,339
2020	1,341,543	149,796	1,491,339
Subtotal	\$6,707,715	\$499,320	\$7,207,035

RECOMMENDATION

Approve the proposed resolution.

SECOND AMENDMENT TO PIER ONE MASTER LEASE

This Second Amendment (“**Second Amendment**”) to Lease No. L-12838 between the City and County of San Francisco through the San Francisco Port Commission and AMB Property, L.P. for Real Property and Improvements located at Pier 1 (“**Master Lease**”) dated for reference purposes only as of February 8, 2016 is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), operating through the SAN FRANCISCO PORT COMMISSION (“**Port**”), as landlord, and AMB Pier One LLC, a California limited liability company, successor in interest to AMB Property, L.P., a Delaware limited liability company (now known as Prologis, L.P.), as tenant (“**Tenant**”).

RECITALS

A. Effective August 2, 1999, Port and AMB Property, L.P., a Delaware limited partnership, entered into the Master Lease for development and use of that certain real property comprised of pier, shed, bulkhead, water and land surface area, all existing building, structures and substructures affixed thereto, together with all rights, privileges and licenses appurtenant thereto, known as Pier 1 (“**Master Premises**”). The Master Lease is for a fifty year term expiring on August 1, 2049 (“**Expiration Date**”). Concurrently, AMB Property, L.P. and Port entered into a sublease for a portion of the Pier 1 shed to Port (“**Port Sublease**”). Both the Master Lease and the Port Sublease were approved by the Port Commission by Resolution 99-17 and the Board of Supervisors by Resolution 329-99. In November 2000, Port and AMB Property, L.P., entered into a First Amendment to the Master Lease to make revisions regarding historic tax credits, participation in sale proceeds and Port Sublease rent (“**First Amendment**”). The Port Sublease commenced on February 1, 2001 and expires on the Expiration Date.

B. With Port’s consent, AMB Property, L.P. assigned its entire interest in the Master Lease to AMB Pier One LLC, a California limited liability company (“**AMB Pier One**” or “**Tenant**”) pursuant to that certain Assignment and Assumption Agreement dated November 17, 2000. AMB Pier One then entered into a sublease with AMB Property L.P. commencing on December 11, 2000 and expiring on December 10, 2020 (subject to extension options) for AMB Property, L.P.’s sublease of certain portions of the Master Premises (as amended, the “**Prologis Sublease**”).

C. On June 3, 2011, the general partner of AMB Property, L.P., AMB Property Corporation, a Maryland corporation, merged with Prologis, a Maryland real estate investment trust, with the surviving entity AMB Property Corporation changing its name to Prologis, Inc., and its operating company AMB Property, L.P. changing its name to Prologis, L.P., a Delaware limited partnership. As a result, AMB Pier One continues to be a wholly-owned subsidiary of Prologis L.P. Prologis, L.P., formerly known as AMB Property, L.P., is hereinafter referred to herein as “**Prologis**.”

D. The Master Premises of the Master Lease has been slightly modified by the: Memorandum of Technical Corrections (February 2, 2004), Second Memorandum of Technical Corrections (April 24, 2007) and Third Memorandum of Technical Corrections (March 10, 2015) (collectively, the “**Technical Corrections Memos**”), each of which revised the legal description of the Master Premises and each of which has been recorded.

E. Tenant now desires to obtain a fifteen (15) year extension option as more particularly described in Section 4 below. As material consideration for the option, Tenant agrees to the following significant terms as further described in this Second Amendment, and the First Amendment to the Port Sublease and the Third Amendment to the Prologis Sublease (each to be executed concurrently with this Second Amendment): (i) in the next five years, Prologis will make substantial capital investments in Pier 1 and will consolidate its space allowing for additional subleasing at current market rates which is expected to result in increased participation rent to Port; (ii) Port will have an early termination right and a 15-year extension option under the Port Sublease; (iii) Tenant will commit to address sea level rise and the requirements of the Port's Chief Harbor Engineer as more specifically set forth in this Second Amendment; (iv) the three amendments will include various provisions to incorporate the above terms into the existing leases, including provisions for valuation and rent adjustments; and (v) updated City requirements will be added to the Master Lease and subleases. The Parties agree that each of the terms in this Second Amendment are material and that Port would not have agreed to the extension option absent such terms.

F. The extension option and other terms included in this Second Amendment will enable the parties to continue to support the Public Trust and the original project objectives by preserving the historic integrity and aesthetic character of the Ferry Building Harbor Area by additional investments in and upgrades to the Pier One historic renovation.

G. Tenant is in Good Standing under the Port's policy set forth in Port Commission Resolution No. 09-49.

H. The Master Lease, Technical Corrections Memos, First Amendment and this Second Amendment shall collectively be referred to as the "Master Lease". All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Master Lease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby amend the Master Lease as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Premises.** *Exhibit A (Revised Legal Description)* and *(Exhibit B Revised Site Plan)* attached to this Second Amendment replace the original Master Lease exhibits to reflect the Technical Corrections Memos and are attached hereto for the parties' convenience.
3. **Condition to Port's Execution of this Second Amendment.** No later than the Second Amendment Effective Date, as defined in Section 24 of this Second Amendment, and subject to Port's consent, AMB Pier One and Prologis will amend the Prologis Sublease to include the terms described below. Port shall have no obligation to execute this Second Amendment absent such amendment of the Prologis Sublease.

(a) **Term and Rent.**

- (i) The first and second option terms will be eliminated and the term of the Prologis Sublease will be extended to December 10, 2040. Prologis shall then have the

one final extension option remaining pursuant to Article 4(B) of the Prologis Sublease, which, if exercised, would extend the Prologis Sublease term from December 11, 2040 through the Expiration Date of the Master Lease (August 1, 2049). Rent for the period between the original expiration date of the Prologis Sublease (December 10, 2020) and the new expiration date (December 10, 2040) shall be determined in the manner set forth in Section 2(D) of the Prologis Sublease.

(ii) AMB Pier One may also grant Prologis an additional extension option for up to fifteen (15) years which shall not exceed the term of the AMB Pier One 15-year extension option provided by this Second Amendment. If AMB Pier One offers an extension option, it must be personal to Prologis, or its "Affiliates" as that term is defined in the Master Lease, and not otherwise assignable. Prologis's rent during the extension term, if any, would be determined in the manner set forth in Section 2(D) of the Prologis Sublease.

(iii) Subtenant's rights to terminate as provided in Section 4(C) of the Prologis Sublease will be eliminated.

(b) Improvements. No later than five (5) years from the Second Amendment Effective Date (as defined in Section 24 of this Second Amendment), Prologis agrees to invest a minimum of \$10 million for the renovation of Bay 1A of which at least \$2 million will be dedicated to core and shell upgrades to Pier 1 ("Subtenant Improvements"). At a minimum, the Subtenant Improvements must include: improvements to the central plant, which will serve the entire building; increased restroom capacity and core plumbing; and replacement of major components of the existing HVAC system to achieve a more functional, efficient, cost effective and environmentally sustainable system. The Subtenant Improvements shall be constructed at no cost to Port and, except as explicitly provided in this Second Amendment, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any improvements discussed above and agrees that it will not seek additional term for the purpose of amortizing the improvements. All Improvements that require Port approval under Section 10 of the Master Lease are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the "Secretary's Standards"), and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures.

The Parties acknowledge and agree that in order to construct the improvements described above, Prologis will temporarily consolidate its premises into Bay 1B (approximately 11,096 square feet). Once construction is complete, Prologis will return to the renovated Bay 1A (approximately 40,000 square feet) and AMB Pier One will actively market Bay 1B for third party sublease, and upon execution of such sublease, Bay 1B will be removed from the premises under the Prologis Sublease. Bay 1A and Bay 1B are shown in the attached *Exhibit C*. Section 4 below describes AMB Pier One's obligations with respect to rent during the construction period.

(c) City Requirements. The Prologis Sublease will be revised to include applicable new and revised City requirements described herein.

(d) Notice Requirement. Tenant must notify Port in writing of any further amendment to the Prologis Sublease no less than sixty (60) days prior to the proposed effective date of such amendment; provided, however, that Port shall not have consent

rights over any such amendments unless Port consent is required pursuant to the terms of the Master Lease or as expressly set forth in this subsection. Notwithstanding anything to the contrary in the Master Lease or in Port's consent to the amendment contemplated by this Second Amendment, any further amendment to the Prologis Sublease shall be subject to Port's consent in its sole discretion (and, if required to Port Commission and/or Board of Supervisors' approval, each in its sole discretion) if such amendment could materially impact the benefits to Port provided by subsections (a)(i), (a)(iii) or (b) above.

(e) Revocation of Extension Option. After notice and no less than One Hundred Eighty (180) days to cure, Port may, in its sole discretion, revoke the Extension Option should the above conditions not be fulfilled.

(f) Confirmation. Solely for purposes of determining whether the conditions precedent for the offering of the Extension Option described above have been satisfied, within One Hundred Eighty (180) days of Tenant's written request, Port shall provide Tenant with a written response either confirming that Tenant and Prologis have fulfilled the obligations described above to Port's satisfaction in its reasonable discretion or the reasons that Port cannot provide such confirmation.

4. Master Lease Extension Option. Section 45 is added to the Master Lease to read as follows:

"45. EXTENSION OPTION.

45.1 Re-Tenancing Bay 1B. Once the Subtenant Improvements described in Section 3 of the Second Amendment are complete, Tenant will use commercially reasonable efforts to actively market Bay 1B to a third party at fair market value rent and terms, subject to (i) Port's consent as to all terms, including the rental rate, and as otherwise provided by Section 16.3 of this Lease; (ii) Port's agreement to a Standard Tenant Improvement Allowance, if any, under Section 2.5(b)(i) of this Lease; and (iii) Port's review and comment on a Marketing Plan submitted to Port no less than ninety (90) days prior to entering into a new sublease. Notwithstanding Tenant's commercially reasonable efforts to re-lease the Bay 1B space, for any period during which Bay 1B is not subleased to a third party or is not generating rental income, Tenant shall continue to pay Rent to Port for the Bay 1B space until the rent commencement date for the new subtenant(s) such that there is no negative financial impact to Port. In no event shall the rent for the new subtenant be less than the effective per square foot rate in effect immediately prior to the date of surrender of Bay 1B by Prologis.

45.2 Option to Extend Term. Provided that all the terms and conditions of this Section 45 are satisfied by Tenant and the Subtenant Improvements described in Section 3(b) of the Second Amendment have been completed, Port grants to Tenant an option for one (1) additional fifteen (15) year term ("**Extension Term**") as to the entire Premises only ("**Extension Option**") commencing upon the date following the Expiration Date (the "**Option Commencement Date**") (August 2, 2049) and expiring on August 1, 2064 ("**Option Expiration Date**"). Tenant may exercise the Extension Option no earlier than forty-eight (48) months prior to the Expiration Date and no later than twenty-four (24) months prior to the Expiration Date by providing Port with written notice of its intent to exercise the Extension Option ("**Option Notice**"). Tenant's exercise of the Extension Option shall be non-revocable by Tenant. There shall be no additional options to extend the Term. The Parties acknowledge and agree that Tenant's rights and obligations under this Section 45 are a material part of the bargained-for consideration under this Lease.

If (i) any Event of Default by Tenant is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term and remains uncured after notice and the expiration of all applicable cure periods; or (ii) the obligations required by Section 3 of the Second Amendment have not been fulfilled to Port's satisfaction in its reasonable discretion, then Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. If Tenant fails to exercise the Extension Option or Port rejects Tenant's exercise of the Extension Option in accordance with this Section 45.2, then this Lease will terminate as of the original Expiration Date.

The lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the Option Expiration Date and the Rent hereunder shall be determined as set forth in this Section.

45.3 Rent During Extension Term.

(a) Minimum Rent. The Minimum Rent for the Extension Term ("**Extension Term Minimum Rent**") shall be adjusted to equal the then Fair Market Value based upon the market rental rate for comparable land in comparable locations along the San Francisco waterfront and in downtown San Francisco. Notwithstanding anything to the contrary herein, Extension Term Minimum Rent shall not include rental for the value of any offices, buildings or improvements. In the event any comparable ground leases include rent that factors in the value of improvements, then the rental value given to any such improvements shall be deducted from the overall rent amount used in such comparable ground leases. Such deduction calculation for the rental value associated with such improvements and the determination of the Extension Term Minimum Rent shall be based on commercially reasonable and customary standards for real estate appraisal and be in conformance with Uniform Standards of Professional Appraisal Practice. The methodologies shall be consistent with typical methods used by California licensed commercial real estate appraisers who hold the MAI designation from the Appraisal Institute. Determination of the Extension Term Minimum Rent shall also include a determination of the type, amount and frequency of built-in escalators (e.g. Consumer Price Index increases or periodic percentage adjustments) for the applicable period based on comparable leases for comparable land in comparable locations along the San Francisco waterfront and in downtown San Francisco ("**Interim Escalation**"). The Extension Term Minimum Rent shall be determined as follows:

(i) Port shall determine the Extension Term Minimum Rent by using its good faith judgment based upon comparable land values and land rental rates in comparable locations along the San Francisco waterfront and in downtown San Francisco and shall submit to Tenant its written determination of the Extension Term Minimum Rent no less than Two Hundred Seventy (270) days prior to the Option Commencement Date. For purposes of determining Fair Market Value, the Port agrees to reasonably cooperate with Tenant to provide market information concerning other existing Port leases and transactions. In the event Port and Tenant are unable to mutually agree on the Extension Term Minimum Rent within thirty (30) days after delivery of Port's notice to Tenant of its determination, then the Extension Term Minimum Rent shall be set by the appraisal process described below. In no event will the Extension Term Minimum Rent so determined be less than the Minimum Rent in effect as of the original Expiration Date (\$1,341,543 annually).

(ii) Within forty-five (45) days after the expiration of the thirty (30) day period specified above, each Party, at its cost and by giving notice to the other Party,

shall appoint a real estate appraiser holding an MAI designation with at least ten (10) years full-time commercial appraisal experience appraising comparable space in the City of San Francisco to prepare an appraisal of the Extension Term Minimum Rent. If a Party does not appoint an appraiser within such 45-day period, the single appraiser appointed shall be the sole appraiser and shall prepare an appraisal of the Extension Term Minimum Rent. Each appraiser shall conduct an independent appraisal within forty-five (45) days after appointment. Each appraiser can utilize the services of special experts, including experts to determine such things as property condition, market rates, leasing commissions, renovation costs and similar matters. The Parties shall cause each appraiser to produce his or her determination in writing, supported by the reasons for the determination.

If the higher appraised rent is one hundred ten percent (110%) or less of the lower appraised rent, then the final Extension Term Minimum Rent shall be the average of such two (2) rent figures (rounded to the nearest \$1.00). If the higher appraised rent is more than one hundred ten percent (110%) of the lower appraised rent, then the Parties shall cause the first two appraisers to agree upon and appoint an independent third appraiser from the City's list of approved appraisers (San Francisco Department of Real Estate) within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties and shall inform the Parties of their appointment at or before the end of such thirty (30) day appointment period. The third appraiser shall submit a declaration to the Parties disclosing any work performed by such appraiser for either Party, any entity related to either Party, or their attorneys, principals, or officers, and any relationship between the third appraiser and either Party that could reasonably be construed as a conflict of interest.

Either Party may, by written notice to the other Party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the Parties shall cause the two (2) appraisers to promptly select another third appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Lease. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30) day period (or within a reasonable period thereafter not to exceed thirty (30) days in the event a good faith objection is made as provided above), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within thirty (30) days from the date on which the Party first applies to the Court for appointment of the third appraiser, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

Each Party shall bear the fees, costs and expenses of the appraiser it selects and of any experts and consultants used by that appraiser. Each Party shall bear one-half (1/2) of the cost of any fee associated with selecting and charged by the third appraiser (if any).

Within thirty (30) days after his or her appointment, the third appraiser shall conduct a hearing, at which Port and Tenant may each make supplemental oral and/or written presentations, with an opportunity for testimony by the first two appraisers and questioning by the Parties and the third appraiser. Within thirty (30) days following the hearing, the third appraiser shall select the appraised Extension Term Minimum Rent determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the arbitrator, to the actual Extension Term Minimum Rent. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the actual Extension Term Minimum Rent. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease. The Extension Term Minimum Rent so determined shall be conclusive, final and binding on the Parties, except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time). Except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time), the provisions of Title 9 of the California Code of Civil Procedure shall not have any application to the appraisal procedure set forth herein.

Upon determination of Extension Term Minimum Rent, the Parties shall acknowledge by an addendum hereto the Extension Term Minimum Rent (to be retroactive to the Option Commencement Date if determined after such date), provided that failure to do so shall not affect the effectiveness of the Extension Term Minimum Rent.

(b) Deductions from Participation Rent during the Extension Term. Starting on the Option Commencement Date, the following will be added to Section 2.5(b)(i) after “(E)” to allow the exclusion of: (i) the costs of certain core and shell improvements and (ii) certain market-driven tenant improvement costs from Total Rental Income:

(F) notwithstanding Section 2.7, one hundred percent (100%) of the cost of any capital improvement to the core and shell of Pier 1 including any premises leased to subtenants, but not including the pier structure or Substructure (“**Core and Shell Improvements**”) provided that (i) the Core and Shell Improvements and the amount of such deduction is approved in advance by Port in its reasonable discretion through approval of a detailed budget and scope of work (as revised and/or updated and approved by Port from time to time), including in connection with Port’s consent to a sublease; (ii) regardless of the Expiration Date, the cost of such improvements is amortized over the useful life of such Core and Shell Improvements as determined by standard depreciation schedules, as approved by Port in its reasonable discretion; and (iii) all Core and Shell Improvements are performed in compliance with Section 10 (Subsequent Construction) and other applicable provisions of the Lease; and (G) the actual costs incurred and paid for tenant improvements and/or improvement allowances in connection with subleases which improvements and/or allowances must be comparable to other similar improvements and/or allowances for comparable space at a comparable location along the San Francisco waterfront and in downtown San Francisco for renewing or new subtenants as the case may be amortized over the useful life of such improvements on a straight-line basis as determined by standard depreciation schedules, subject to the arbitration procedures set forth in Section 45.3(a)(i) - (ii) if the parties fail to agree (“**Amortized TI and Allowances**”).

(i) During the Extension Term, with each quarterly Participation Rent Statement, Tenant shall provide adequate documentation of the actual costs of the Core and Shell Work and/or Amortized TI and Allowances deducted, accompanied by

documentation reasonably satisfactory to Port evidencing such expenditures. All such proofs of expenditure must be attributable directly to work or materials performed, constructed or installed in connection with the Core and Shell Improvements and/or Amortized TI and Allowances.

(ii) Tenant may not deduct the cost of any items not expressly excluded from the definition of Total Rental Income in Section 2.5(v)(i) of the Lease as modified by the Second Amendment and shall not include items related to Tenant's trade fixtures, office equipment and supplies, furniture, communications facilities (whether voice or data) or any other items of personalty not intended to be affixed to or become a part of the Building or its utility systems, nor any fees, exactions, impositions, or similar charges imposed as a condition to permit approval. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the work, the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. In no event shall the cost of any construction management fees, general administrative costs or other forms of mark-up be eligible for deduction unless clearly identified in the Port's approval. Furthermore, except to the extent such costs are (A) included within the operating expenses and common area maintenance costs paid to Tenant by Subtenants as provided in Section 2.5(b)(i)(C) and (B) specifically allowable under Section 2.5(b)(i)(F) (added by the Second Amendment), in no event shall maintenance, repair and/or replacement costs be eligible for deduction.

(iii) Tenant shall not be entitled to any unapplied or unused portion of the approved costs that are not deducted during the Extension Term. Other than as set forth in this Section and Section 46.2 regarding Pier Flood Protection Measures that are Core and Shell Improvements, Port shall have no obligation to provide, and Tenant shall not be entitled to, a rent credit, tenant improvement allowance or any other form of reimbursement or credit in connection with such Core and Shell Improvements.

(iv) Notwithstanding anything to the contrary contained herein, in no event shall Tenant be entitled to any deduction for Core and Shell Improvements costs or Amortized TI and Allowances in the event Tenant is in default, or an event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default. Upon the occurrence of a Tenant Event of Default during any period Tenant is eligible for the deductions described in this section, Tenant's right to deduct shall cease and shall not be reinstated until the Tenant Event of Default is cured. In no event shall the cessation in the application of the deduction extend the amortization schedule.

(c) Participation Rent.

(i) Additional Participation Rent. Notwithstanding any other provision of this Lease, Tenant shall pay to Port a minimum guaranteed Participation Rent for Bay 1B of Five Hundred Thousand dollars (\$500,000) (the "**Minimum Guaranteed Amount**") over four (4) years in equal quarterly installments of Thirty One Thousand Two Hundred Fifty dollars (\$31,250) each in the manner specified in this Section. The Participation Rent for Bay 1B shall be reported and calculated independently of the remainder of the Premises until Tenant has paid the Minimum Guaranteed Amount and such payment is not subject to any set off, adjustment or deduction for any of the items listed in 2.5(b)(i)(A)-(E) or otherwise. On a quarterly basis, commencing with the first quarterly Participation Rent Statement due after the Second Amendment Effective Date until the Minimum Guaranteed Amount is paid in full, Tenant shall pay the greater of: (i) Thirty One Thousand Two Hundred Fifty dollars (\$31,250); or (ii) the Participation Rent otherwise due for Bay 1B calculated per Section 2.5(b) which will be based on (A) starting on the

rent commencement date for the new Bay 1B subtenant, the rent paid by the new Bay 1B subtenant or (B) prior to such rent commencement date, the effective per square foot rate immediately prior to the date of surrender by Prologis as described in Section 45.1 above. Once the entire Minimum Guaranteed Amount is paid, Tenant shall pay Participation Rent for Bay 1B in combination with the rest of the Premises as otherwise provided by this Lease. If, for any reason, this Lease terminates prior to the payment of the entire Minimum Guaranteed Amount, Tenant shall pay the unpaid balance payment prior to such termination date.

(ii) If Tenant elects to exercise the Extension Option, then, starting on the Option Commencement Date, the definition of "Excess Rental Income" in subsection (b)(ii) shall be deleted and replaced with the following definition to eliminate the deduction for Projected Total Rental Income from Excess Rental Income:

"Excess Rental Income" means the Total Rental Income received by Tenant in excess of the Minimum Rent (if any) determined on a quarterly basis."

5. **Flood Risk And Sea Level Rise.** Section 46 is added to the Master Lease to read as follows:

46. FLOOD RISK AND SEA LEVEL RISE.

46.1 **Flood Risk and Sea Level Rise Disclosure.** On November 12, 2015, the U.S. Federal Emergency Management Agency ("FEMA") published draft Flood Insurance Rate Maps (FIRMs) for the City and County of San Francisco that depict all pile supported Port piers and many other Port structures in a Special Flood Hazard Area subject to a 100-year flood. The City expects FEMA to finalize these maps by the end of 2016, at which point the maps will be appended to the San Francisco Floodplain Management Ordinance (Administrative Code Chapter 2A, Article XX).

On September 22, 2014, acting through its Capital Planning Committee, the City and County of San Francisco adopted "Guidance for Incorporating Sea Level Rise Into Capital Planning in San Francisco: Assessing Vulnerability and Risk to Support Adaptation" (the "SLR Guidance"), a copy of which can be accessed at <http://onesanfrancisco.org/staff-resources/sea-level-rise-guidance/>. The SLR Guidance quotes the findings of the 2012 National Research Council Report, Sea-Level Rise for the Coasts of California, Oregon and Washington: Past Present and Future, which projects sea level rise estimates for San Francisco Bay relative to the year 2000 of 11 inches (+/- 4 inches) by 2050 and 36 inches (+/- 10 inches) by 2100 as the most likely scenarios for sea level rise (the report quotes 66 inches of sea level rise by 2100 as a worst case scenario). Tenant represents and warrants to Port that Tenant has received and reviewed the FEMA disclosure notice attached as *Schedule 1*.

46.2 **Pier Flood Protection Measures.** In addition to Tenant's obligations to comply with Laws under Section 6 (Compliance with Laws) and to repair and maintain the Premises (including, but not limited to, the Bulkhead and Substructure, pier, pier apron, the Public Access Area and all other Improvements) under Section 8 (Repair and Maintenance), if, at any time during the Term of this Lease, and subject to compliance with the California Environmental Quality Act ("CEQA"), the Chief Harbor Engineer determines in his or her regulatory capacity in accordance with applicable Laws that there is a need for **Pier Flood Protection Measures** (as defined below) at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety ("**CHE Determination**"), Tenant shall be responsible at no cost to Port for

permitting, constructing and implementing any such Pier Flood Protection Measures in the manner described in this Section. Except as provided in Section 45.3(b) with respect to Core and Shell Improvements during the Extension Term, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any Pier Flood Protection Measures and agrees that it will not seek additional term for the purpose of amortizing the cost of any Pier Flood Protection Measures. Port and Tenant agree that neither a CHE Determination nor a Threat Determination (as defined below) under this Section 46 shall be a Condemnation for purposes of this Lease.

“**Pier Flood Protection Measures**” may include without limitation (1) temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with wave overtopping of the pier apron; (2) waterproofing or relocation of utility infrastructure from underneath the pier to minimize the risk of water or wastewater discharges to San Francisco Bay; and/or (3) short perimeter flood walls or similar measures to address more frequent and serious flooding associated with stillwater levels at or above the elevation of the pier deck. For purposes of this section, and without affecting Tenant’s other obligations under the Lease (including under Section 6 (Compliance with Laws) and Section 8 (Repair and Maintenance)), Pier Flood Protection Measures do not include raising first floor elevations or measures to rebuild the pier structure or Substructure that are beyond Tenant’s maintenance and repair obligations or regional improvements such as breakwater or levee improvements which the parties acknowledge may be necessary to protect the City from sea level rise, but are beyond the scope of this Lease.

(a) **CHE Determination Notice.** Promptly following a CHE Determination, Port will deliver to Tenant notice of the CHE Determination (“**CHE Determination Notice**”). The CHE Determination Notice will include a description of the need for required Pier Flood Protection Measures and a timeline to submit for the Chief Harbor Engineer’s approval, in his or her sole discretion, a conceptual level scheme of the required measures along with a schedule for completing design, securing all regulatory approvals and completing construction (“**Pier Flood Protection Plan**”). The Chief Harbor Engineer has the sole discretion to approve or disapprove the final designs and implementation of any Pier Flood Protection Measures to be constructed within Port’s jurisdiction (including the Premises). Within sixty (60) days of receiving such plan, the Chief Harbor Engineer will review and either approve the plan or request revisions to the plan. If revisions are required, Tenant will promptly revise the Pier Flood Protection Plan and re-submit to the Chief Harbor Engineer for his or her review and approval. Tenant will continue to revise and re-submit until the Chief Harbor Engineer approves the Pier Flood Protection Plan, as revised; provided, however, Tenant must have obtained the Chief Harbor Engineer’s approval of a Pier Flood Protection Plan (the “**Approved Pier Flood Protection Plan**”) within the time period set forth in the CHE Determination Notice.

(b) If Tenant fails to implement any required Pier Flood Protection Measures or the Approved Pier Flood Protection Plan within the time required in the CHE Determination, subject to extension of such date due to Force Majeure with the CHE’s consent as to an outside completion date, Port shall provide Tenant with thirty (30) days written notice and the right to cure such failure. If Tenant fails to cure within the 30-day period, Port shall have the right but not the obligation to implement the measure(s) on Tenant’s behalf following an additional thirty (30) days’ written notice of Port’s intent to do so and Tenant shall reimburse Port for its actual costs. In the event that Tenant’s breach of the obligations in this Section 46 gives rise to an emergency which creates an imminent danger to public health or safety as determined by the CHE, Port will provide advance notice, if possible, as is reasonable under the circumstances. This provision is not subject to the notice and cure periods provided by Sections 21.1 or 21.2 (Port’s Right

to Perform) or 22 (Events of Default; Termination), but Port shall have all other rights and remedies provided in this Lease or available at law or equity for Tenant's default under this Section 46, including without limitation, those provided in Sections 23 and 24 (Remedies and Port's Equitable Relief) which shall survive the expiration or earlier termination of this Lease.

46.4. Termination. If, at any time during the Term, including the Extension Term if any, the Chief Harbor Engineer determines conditions at the Premises pose an ongoing threat to public health and safety due to flood risk and sea level rise conditions (even despite construction of the Pier Flood Protection Measures) ("**Threat Determination**"), this Lease will terminate within ninety (90) days of the Chief Harbor Engineer's written notice to Tenant of the Threat Determination, or the termination date set forth in the Threat Determination notice, whichever is earlier, without cost or liability to Port.

46.5 Required Flood Protection Improvements for Other Port Property. If the Chief Harbor Engineer determines that there is a need to install flood protection measures within the Premises to protect other Port property, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of Port property outside the Premises. If Port elects to perform flood protection measures for other Port property, Port shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course of such work, provided Port uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

46.6 Limitations; Waiver.

(a) The Parties acknowledge and agree that Tenant's obligations under this Section 46 are a material part of the bargained-for consideration under the Second Amendment to this Lease. Tenant's obligation hereunder in connection with the Pier Flood Protection Measures shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements and the Bulkhead and Substructure), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, or the likelihood that the Parties contemplated the particular Pier Flood Protection Measures involved. Further, no occurrence or situation arising during the Term, nor any present or future Law or circumstance, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port except with respect to Tenant's right to terminate under the terms and conditions specified in Section 12 (Damage and Destruction) and Section 13 (Condemnation). Without waiving the right to terminate as provided in Section 12 (Damage and Destruction) and Section 13 (Condemnation), Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws or on account of any such occurrence or situation. Notwithstanding anything to the contrary, neither Port, City nor Tenant are waiving any rights against any non-affiliated third party with respect to

the waiver contained in this Section. "Third party" does not include City or any of its agencies.

(b) If the Chief Harbor Engineer determines that there is a need for Pier Flood Protection Measures or makes a Threat Determination as described in this Section, the rights and obligations of the Parties shall be as set forth in this Section. Accordingly, Port and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure as such sections may from time to time be amended, replaced, or restated. Notwithstanding the prior sentence, Port and Tenant do not intend to waive their rights under Section 12 (Damage and Destruction) and Section 13 (Condemnation) in the event of damage, destruction or Condemnation. Tenant understands and expressly accepts and assumes the risk that any facts concerning potential claims released might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Section shall remain effective. Therefore, as to the matters discussed in this Section, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, 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.

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time the Second Amendment was made, or that Tenant had the opportunity to consult with counsel, but declined to do so."

6. Additional Improvements to Address Sea Level Rise. Section 47 is added to the Master Lease to read as follows:

"47. ADDITIONAL IMPROVEMENTS TO ADDRESS SEA LEVEL RISE.

At any time during the Term or the Extension Term, Port or Tenant may propose optional additional improvements to be performed by Tenant, at its option and at its cost that (i) are beyond the scope of the potential Pier Flood Protection Measures contemplated in Section 46 of the Lease, such as raising first floor elevations or measures beyond repair and maintenance of pier structure or Substructure elements (such as rebuilding such structures) or to address the impacts of sea level rise in order to preserve or enhance the value or useful life of the Premises; and (ii) are not otherwise Tenant's obligation under this Lease (including under Section 6 (Compliance with Laws) and Section 8 (Repair and Maintenance)). If Port, in its proprietary capacity, approves such improvements and the improvements cannot be amortized over the remaining original Term as determined by standard depreciation schedules and subject to Port's concurrence in its reasonable discretion, then, notwithstanding the timeframe set forth in Section 45.2 of the Lease, but subject to all other terms and conditions of Section 45.2, Tenant may exercise its Extension Option at the time of Port's approval. The acceleration of Tenant's right to exercise its option will not affect Port's extension option as provided in Section 1(F)(a) of the Port's Sublease or the timing thereof. Tenant acknowledges that additional Regulatory Approvals will be required for such improvements, as well as possible additional environmental review and Port Commission's and Board of Supervisors' approvals, each in its sole discretion. Nothing in this Section 47 shall affect the parties' rights and obligations under Section 46 of the Lease."

7. **Condition and Nature of Premises.** Section 48 is added to the Master Lease to read as follows:

“48. CONDITION AND NATURE OF PREMISES.

48.1 Tenant acknowledges that: (a) the Premises is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (c) there is a risk that sea level rise will increase the cost of substructure repairs and/or prevent or limit the ability to make repairs to the substructure; and (d) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

48.2 Port is undertaking an Earthquake Vulnerability Study of the Northern Waterfront Seawall (the “**Seawall**”) that is expected to be published by mid-2016. The proximate location of the Seawall is shown on *Exhibit D* attached hereto. A description of the study along with a progress update can be found in the Port staff report for Item 12a of the October 13, 2015 Port Commission meeting at the following links:

<http://sfport.com/modules/showdocument.aspx?documentid=10533>

<http://sfport.com/modules/showdocument.aspx?documentid=10534>

48.3 Subject to the rights of Subtenants, including the Port under the Port Sublease, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port and permit Port and its Agents to enter the Premises upon reasonable prior notice (except in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of inspecting, repairing and rebuilding the Seawall as Port reasonably deems necessary. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of the Premises or Seawall. If Port elects to perform work on the Seawall within the Premises pursuant to this Section, Port shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.”

8. **Term.** Section 1.2 (Term) is deleted and replaced with the following:

“1.2. Term.

The Term of this Lease commenced on August 2, 1999 (the “**Commencement Date**”). The Term of this Lease shall expire on August 1, 2049, subject to the Extension Option described in Section 45 (Extension Option) of this Lease unless earlier terminated in accordance with the terms of this Lease. The period from the Commencement Date until such expiration date or the Option Expiration Date, as the case may be, is referred to as the “Term.”

9. Development Project; Accessibility. Sections 1.6 – 1.8 are added to the Master Lease to read as follows:

"1.6. Proximity of Development Project Tenant acknowledges that during the Term, a Seawall Lot 351 project, the Downtown Ferry Terminal Project and other development, removal or renovation projects by public and/or private parties are or may be scheduled to be constructed on property in the vicinity of the Premises. Tenant is aware that the construction of such projects and the activities associated with such construction will generate certain adverse impacts that may result in some inconvenience to or disturbance of Tenant. Such impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all claims against the Indemnified Parties arising out of such inconvenience or disturbance, including without limitation any abatement or reduction of Rent.

1.7. Accessibility Inspection Disclosure. 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. Tenant is hereby advised that the portions of the Premises added by this Second Amendment have not been inspected by a CASp."

1.8. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable Disabled Access Laws. As further set forth in Section 6 (Compliance with Laws), Tenant further understands and agrees that it is Tenant's obligation, at no cost to Port, to cause the Premises and Tenant's use thereof to be conducted in compliance with Disabled Access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under Disabled Access Laws."

10. Reporting Requirements for Possessory Interest Taxes. Section 4.1(ii) is deleted and replaced with the following:

"(ii) Reporting Requirements. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance)."

11. Prevailing Wages. Section 10.7(e) (Prevailing Wages) of the Lease is deleted (see new Section 42.16).

12. Secretary's Standards. Section 10.10 is added to read as follows:

“10.10 All interior and exterior Alterations (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of the building) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the "Secretary's Standards"), and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as *Exhibit E* ("Port's Guidelines"). Tenant expressly agrees to comply with the Secretary's Standards for all current and future interior and exterior repair, alteration, improvement or construction. Additionally, Tenant expressly agrees to comply with Port's Guidelines as applicable.”

13. Pesticides. Section 19.1(d) of the Lease is deleted (see new Section 42.19).

14. Energy Consumption. Tenant shall obtain energy efficiency audits and annually measure and disclose energy performance, in accordance with the standards of the San Francisco Environment Code Chapter 20: Existing Commercial Buildings Energy Performance. These requirements are necessary to comply with the Energy Performance, Data Checklist, and Facility Summary requirements set forth in the California Public Resources Code Section 25402.10 et seq. and 8 CCR § 1680 et seq.. Tenant acknowledges that Port currently has no data to disclose regarding energy performance of the buildings within the Premises.

15. Insurance. Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements as required by Section 18 (Insurance) using the internet-based insurance compliance tracking system EXIGIS unless otherwise directed by Port.

16. Definitions. Section 44 (Definitions) is revised by deleting and replacing the following terms as shown:

“Expiration Date” means August 1, 2049.

17. Special Provisions. Section 42 (Special Provisions) of the Master Lease is deleted and replaced with the following:

“42. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this Master Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant 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. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

42.1 Nondiscrimination.

a. Covenant Not to Discriminate. In the performance of this Lease, Tenant 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 Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

b. Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 42.1(a) above. In addition, Tenant 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. Tenant does not as of the date of this Lease 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. HRC Form. On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

e. Penalties. Tenant 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 Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

42.2. Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.sfgov.org. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 42.2(a) above.

(c) Tenant understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease.

(d) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant 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)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(e) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant 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. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department 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. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. 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 Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant 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.

(g) Tenant 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.

(h) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(i) Upon request, Tenant 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.

(j) Within five (5) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(k) 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.

42.3 Local Business Enterprises. The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with HRC to determine appropriate methods for promoting participation by LBEs in the Scope of Work. 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/site/uploadedfiles/sfhumanrights/directory/vlist_1.htm.

42.4 Resource-Efficient Facilities and Green Building Requirement. Tenant agrees to comply with all applicable provisions of Environment Code Chapter 7 relating to resource-efficiency and green building design requirements.

42.5 Prohibition of Tobacco Sales and Advertising. Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Premises. 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.

42.6 Prohibition of Alcoholic Beverages Advertising. Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. 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.

42.7 Graffiti Removal. Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant'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 Lease 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.).

42.8 Waiver of Relocation Assistance Rights. If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 35.1, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 13 relating to Condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

42.9 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.

42.10 Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1126 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. Tenant 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. Tenant further acknowledges that, if applicable, the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant 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.

42.11 Tropical Hardwood and Virgin Redwood Ban. Port and the City urge Tenant 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, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant 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.

42.12 Preservative-Treated Wood Containing Arsenic. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease 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. Tenant 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 Tenant 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.

42.13 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.

42.14 Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, 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 Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

42.15 Drug-Free Workplace. Tenant 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.

42.16 Prevailing Wages and Working Conditions. 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. Tenant 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, (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) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant 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.

Tenant shall include and shall require its subtenants, and 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. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. 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 23.61 against the breaching party.

42.17 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, 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 Tenant's sole expense.

42.18 Food Service Waste Reduction Ordinance. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant 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 Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

42.19 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. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, 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 Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant 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 Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant'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 Tenant 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 Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant 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>."

42.20 Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Tenant 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 Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant 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) Tenant 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. Tenant 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) Tenant 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 Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("**OLSE**"), available on OLSE's website, in a conspicuous

place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant 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 Lease, 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 Lease.

(h) If Tenant 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."

42.21 Local Hire. 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 (the "Local Hiring Requirements"). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

Tenant shall include, and shall require its subtenants 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. Tenant shall cooperate, and require its subtenants 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. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. 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.

42.22. San Francisco Bottled Water Ordinance. Tenant 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 Premises with attendance of more than 100 people.

42.23 Employee Signature Authorization Ordinance. The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) 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. Tenant

shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators.

42.24 Waiver of Relocation Benefits. To the extent allowed by applicable Law, Tenant 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, except as specifically provided in this Lease.”

18. Real Estate Broker's Fees. Each party represents that it has not dealt with any brokers, as broker, agent or finder in connection with this First Amendment. Each party agrees to hold the other party harmless from all damages, judgments, liabilities and expenses (including reasonable attorneys' fees) arising from any claims or demands of any broker, agent or finder based upon any acts of the other party for any commission or fee alleged to be due in connection with this First Amendment or the exercise of the option provided by this First Amendment.

19. Recordation. This Second Amendment will not be recorded by either Party. At the request of either Party, the Parties agree to execute and record in the Official Records a Memorandum of Second Amendment in a form agreeable to the Parties, which shall include, among other customary provisions, a reference to Tenant's Extension Option.

20. Entire Agreement. This Second Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Second Amendment are superseded in their entirety by this Second Amendment. No prior drafts of this Second Amendment or changes between those drafts and the executed version of this Second Amendment 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 such drafts in interpreting this Second Amendment.

21. Miscellaneous. This Second Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Second Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary or otherwise. This Second Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Second Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. As amended hereby, the Master Lease is hereby ratified and confirmed in all respects. In the event of any inconsistencies between the terms of this Second Amendment and the Master Lease, the terms of this Second Amendment shall prevail. Time is of the essence of this Second Amendment. This Second Amendment shall be governed by the laws of the State of California. Neither this Second Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

22. Full Force and Effect. Except as specifically amended herein, the terms and conditions of the Master Lease shall remain in full force and effect.

23. Subject to Board of Supervisor's Approval. Notwithstanding anything to the contrary contained in this Second Amendment, Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Second Amendment

unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Second Amendment and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Second Amendment be null and void if City's Mayor and the Board of Supervisors do not approve this Second Amendment, in their respective sole discretion. Approval of this Second Amendment by any department, commission or agency of City shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

24. Effective Date. This Second Amendment is effective upon Port's execution as indicated below. Promptly following the actual Second Amendment Effective Date, Port and Tenant shall execute a memorandum substantially in the form attached hereto as *Exhibit F* confirming the actual Second Amendment Effective Date, but either party's failure to do so shall not affect the commencement of this Second Amendment.

EXHIBITS AND SCHEDULES

- EXHIBIT A REVISED LEGAL DESCRIPTION (FROM THIRD TECHNICAL CORRECTION MEMO)
- EXHIBIT B REVISED SITE PLAN DESCRIPTION (FROM THIRD TECHNICAL CORRECTION MEMO)
- EXHIBIT C MAP OF BAY 1A AND 1B
- EXHIBIT D SEAWALL LOCATION MAP
- EXHIBIT E PORT GUIDELINES
- EXHIBIT F SECOND AMENDMENT EFFECTIVE DATE MEMORANDUM

SCHEDULE 1 FEMA DISCLOSURE NOTICE

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, Port and Tenant execute this Second Amendment to Master Lease at San Francisco, California, as of the last date set forth below.

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

By: _____
Susan Reynolds, Deputy Director, Real Estate

Date Signed: _____

TENANT: AMB Pier One LLC, a California limited liability company

By: Prologis, L.P., formerly known as AMB Property, L.P., a Delaware limited partnership, its Manager

By: Prologis, Inc., formerly known as AMB Property Corporation, a Maryland corporation, its General Partner

By: _____
Stephen T Lueck, Senior Vice President

Date Signed: 2/8/16

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

By: _____
Rona H. Sandler, Deputy City Attorney

Amendment Prepared By: Jay Edwards, Senior Leasing Manager _____ (initial)
Port Commission Reso. No.
Board of Supervisors Reso. No.

Thence northeasterly, easterly, and southeasterly along said curve, through a central angle of $90^{\circ} 00' 00''$, an arc length of 23.56 feet;

Thence $S 35^{\circ} 02' 40'' E$, 106.31 feet to a tangent curve, concave to the west, having a radius of 15.00 feet;

Thence Southeasterly, southerly, and southwesterly along said curve, through a central angle of $90^{\circ} 00' 00''$, an arc length of 23.56 feet;

Thence tangent to last said curve, $S 54^{\circ} 57' 20'' W$, 160.39 feet to a tangent curve, concave to the southeast, having a radius of 313.25 feet;

Thence Southwesterly along said curve, through a central angle of $11^{\circ} 02' 34''$, an arc length of 60.37 feet;

Thence tangent to last said curve, $S 43^{\circ} 54' 46'' W$, 130.70 feet;

Thence $S 54^{\circ} 57' 20'' W$, 211.37;

Thence, $S 35^{\circ} 02' 40'' E$, 33.69 feet,

Thence $S 54^{\circ} 57' 20'' W$, 123.39 feet;

Thence, $S 35^{\circ} 02' 40'' E$, 24.98 feet;

Thence $S 54^{\circ} 57' 20'' W$, 25.10 feet;

Thence, $S 35^{\circ} 02' 40'' E$, 5.50 feet;

Thence $S 54^{\circ} 57' 20'' W$, 42.15 feet;

Thence $N 35^{\circ} 02' 40'' W$, 36.12 feet;

Thence $S 54^{\circ} 58' 11'' W$, 3.95 feet to the True Point Of Beginning;

Containing 129,346 square feet (2.967 acres), more or less.

EXHIBIT B
REVISED SITE PLAN DESCRIPTION
(FROM THIRD TECHNICAL CORRECTION MEMO)

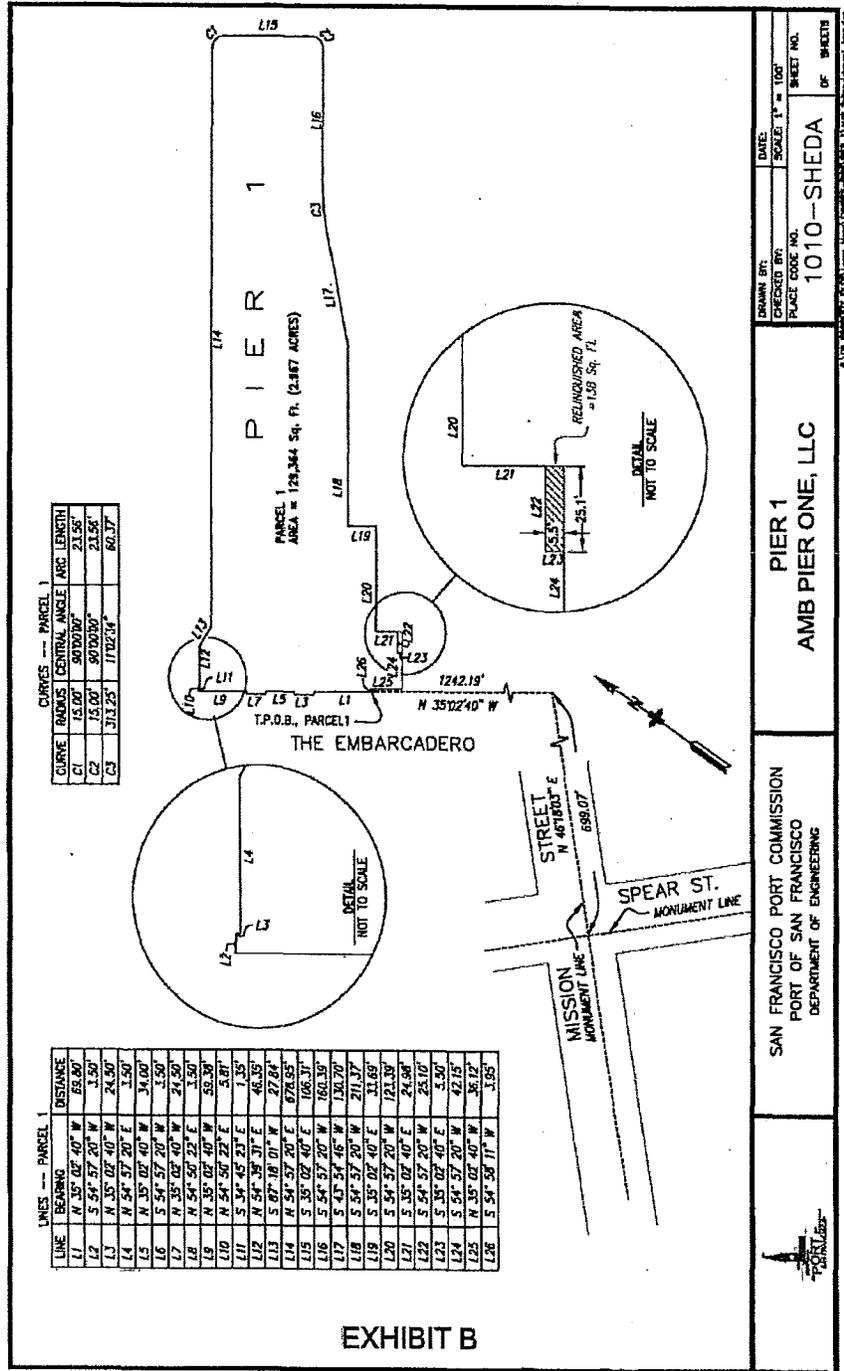


EXHIBIT B

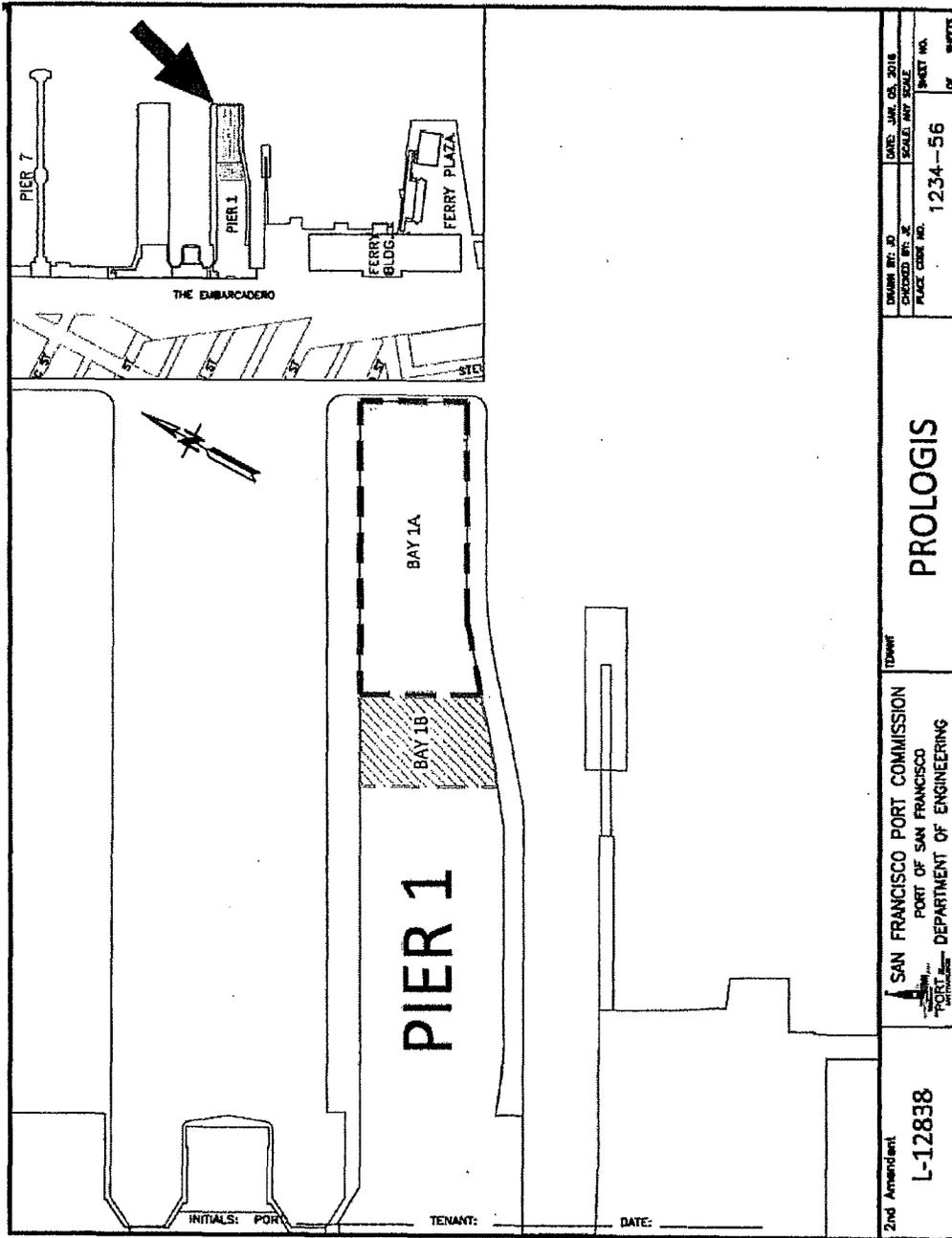
DATE:	SCALE: 1" = 100'	SHEET NO.:
DRAWN BY:	PLACE CODE NO.:	OF SHEETS:
CHECKED BY:	1010-SHEDA	

PIER 1
AMB PIER ONE, LLC

SAN FRANCISCO PORT COMMISSION
 PORT OF SAN FRANCISCO
 DEPARTMENT OF ENGINEERING

Initials:
 Port _____
 Tenant SPK

EXHIBIT C
MAP OF BAY 1A AND 1B



2nd Amendment L-12838	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	PROLOGIS	DRAWN BY: J.D. CHECKED BY: J.E. PLOTTED BY: J.E.	DATE: JAN. 05, 2016 SCALE: NYS SCALE	SHEET NO. 1234-56	OF SHEETS 56
			E:\Projects\East\Assn\New\Drawings-1000\1000.dwg			

Initials
 Port
 Tenant SP

EXHIBIT E

PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES

Approved by San Francisco Port Commission, October 26, 2004, with proposed amendments to respond to comments from California State Office of Historic Preservation.

Background

As part of the preparation of the Port of San Francisco Embarcadero Historic District nomination, the Port has developed Historic Preservation Review Guidelines (Guidelines) to define how the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards) should be interpreted and applied to the historic resources within the District, to ensure its responsible management and stewardship. The set of Guidelines below focuses on Pier and Bulkhead Wharf Substructures, providing an important tool to be used by the Port's historic preservation experts to define parameters for the repair, maintenance or alterations to the pile foundations, substructures and decks of piers and bulkhead wharves upon which pier sheds, bulkhead buildings and other waterfront structures sit.

These Guidelines were developed by the Port's historic preservation expert staff in concert with San Francisco Architectural Heritage and preservation experts familiar with the specific historic resources in the District. The Guidelines were approved by the San Francisco Port Commission in October 2004, and further amended to respond to comments from the California State Office of Historic Preservation. The Guidelines will be used in the review of pier and bulkhead wharf substructure projects that are subject only to approval by the Port. Projects affecting District resources which are subject to review and approval by any of the following entities are not subject to these Guidelines, in recognition of the separate review criteria and practices employed by those agencies to administer the Secretary's Standards:

- 1) Federal Undertakings - Requiring Section 106 consultation
 - Projects receiving federal funding
 - Transfer of federal property
 - Approval of a federal permit, license or similar entitlement (i.e. Army Corps. of Engineers)
- 2) Federal Historic Preservation Tax Credit Projects – Requiring State Office of Historic Preservation and National Park Service approvals
- 3) San Francisco Historic Preservation Commission – Subject to Planning Code Article 10 Provisions for City Landmarks and City Historic Districts

Port of San Francisco Review Process – Overview

For projects affecting historic resources within the Embarcadero Historic District that are subject only to the Port's review and approval, the Port conducts its review in conjunction with use of Historic Preservation Guidelines, where applicable, to direct actions that comply with the Secretary's Standards.

All projects undergo case-specific review to determine the appropriate application of the Guidelines and other related Port design reviews. The Port maintains qualified historic preservation expertise on staff and may work with other qualified historic preservation professionals to review projects for consistency with the Secretary's Standards and any applicable Guidelines.

In the case of repairing and managing pier and bulkhead wharf substructures, the Guidelines below are to be used in the Port review process. The process follows the principles of the Secretary's Standards for Rehabilitation and the Port's longstanding practice of repairing existing materials wherever feasible. Replacement of historic materials, if deterioration makes such repair infeasible, is limited to replacement in-kind (use of the same materials) whenever possible. Where replacement in-kind is infeasible, the Port directs use of new substitute materials that are compatible with the character defining features of the subject historic resource to preserve the historic integrity of contributing resources or, in the case of reviewing non-contributing resources, the integrity of the Historic District.

Pier and Bulkhead Wharf Substructures

The historic piers and resources in the Embarcadero Historic District are made up of pile-supported platforms upon which pier shed and bulkhead building structures were built to conduct maritime commerce. The substructure of the piers and bulkhead wharf, described in detail in Section 7 of the Embarcadero Historic District nomination, consists of vertically driven piles, topped by stringer and pile cap beams, which create the horizontal structural framework upon which pier decks rest. Beneath these structures, the tides of the San Francisco Bay ebb and flow. Pier substructures are defined to include pier aprons, which are constructed at the perimeter of piers, generally used to provide a pile-supported platform for ship berthing, an outdoor work area, and in more recent times a public access and recreation area. In most instances, pier aprons are constructed of wood and have a shorter life span, historically requiring more maintenance and repair than steel and concrete substructures.

Within this complex, the bulkhead wharf is an important feature. It is comprised of 23 individual sections that extend end to end throughout the historic district, adjacent and connected to the Seawall, which establishes the constructed edge of the waterfront between piers. In addition, the bulkhead wharf plays an important role in defining the Embarcadero's urban form, which supports maritime, public access and commercial recreation/retail functions.

Initials:
Port _____
Tenant SR

EXHIBIT F

SECOND AMENDMENT EFFECTIVE DATE MEMORANDUM

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

Tenant:

Lease Number:

Second Amendment Date:

Premises: [_____, Suite _____]
San Francisco, California

The Second Amendment Effective Date is established as _____, 20____. and the
Expiration Date is August 1, 2049.

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

By: _____
Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

SCHEDULE 1
FEMA Disclosure Notice

The Federal Emergency Management Agency ("FEMA") is performing detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline within the nine San Francisco Bay Area counties that will provide flood and wave data for the City and County of San Francisco's Flood Insurance Study report and Flood Insurance Rate Maps ("FIRMs"). This process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront.

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA").

On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

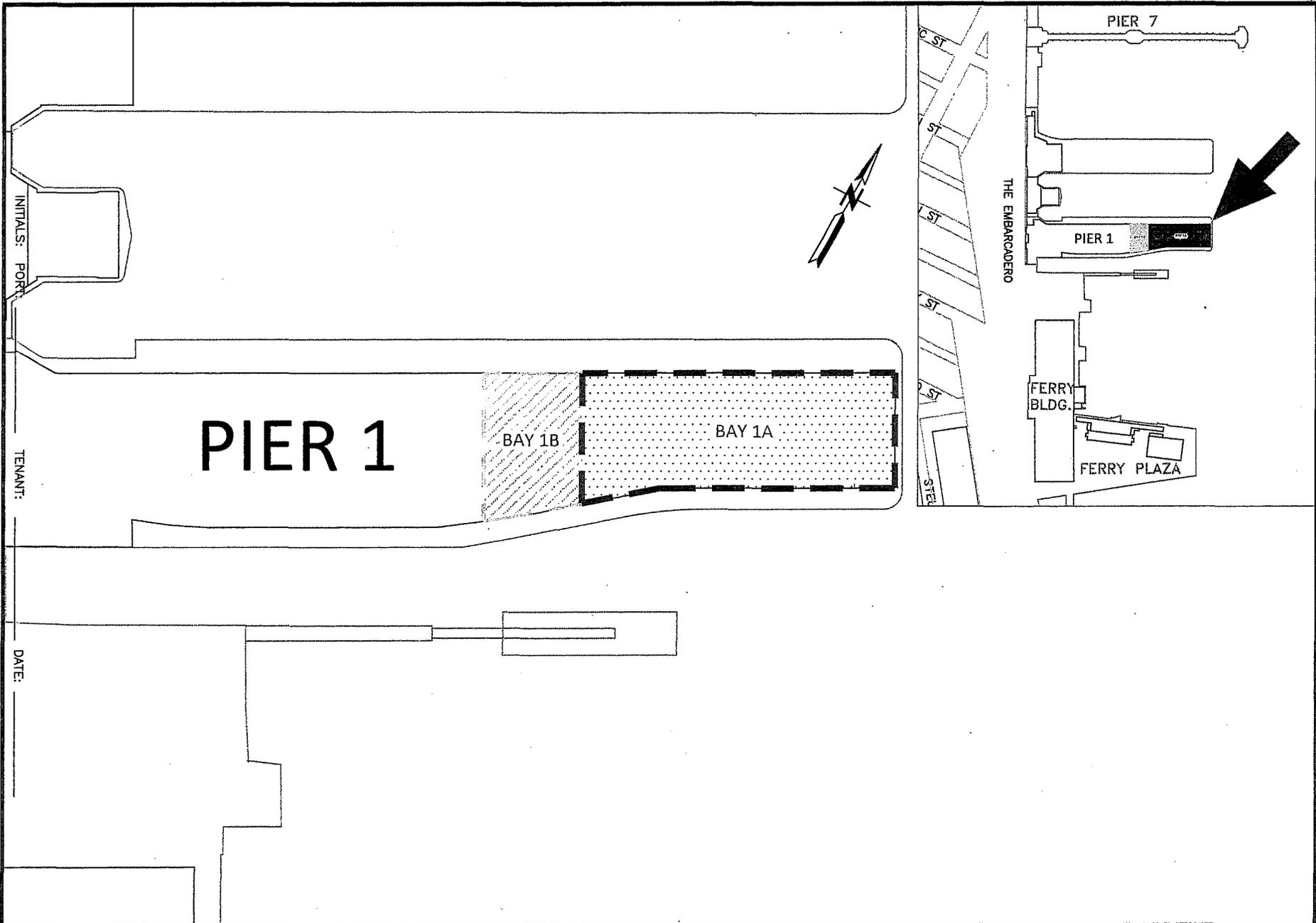
On May 7, 2013, FEMA conducted a Flood Risk Review meeting in San Francisco. The community was provided with a 60-day comment period to review and comment on the draft FIRMs. The comment period ended on July 6, 2013. On November 12, 2015, FEMA issued the preliminary FIRMs and Flood Insurance Study (FIS) report, and the GIS database for the City and County of San Francisco. These will be subject to comment and appeal before becoming final in 2016 (anticipated). The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following link:

<http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=38&choProj=260>

Initials:

Port _____

Tenant STC



2nd Amendent
L-12838

 **SAN FRANCISCO PORT COMMISSION**
 PORT OF SAN FRANCISCO
 DEPARTMENT OF ENGINEERING

TENANT
PROLOGIS

DRAWN BY: JD
 CHECKED BY: JE
 PLACE CODE NO.

DATE: JAN. 05, 2016
 SCALE: ANY SCALE
 SHEET NO.
 1234-56
 OF SHEETS

**PIER ONE
SAN FRANCISCO, CALIFORNIA
SUBLEASE**

BASIC SUBLEASE INFORMATION

Date: August 2, 1999

Sublandlord: AMB PROPERTY, L.P., a Delaware limited partnership

Subtenant: CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation acting by and through
THE SAN FRANCISCO PORT COMMISSION

Subtenant's Address for Notices:

Before Commencement Date: San Francisco Port Commission
(Reference: Pier 1)
3100 Ferry Building
San Francisco, CA 94111
Attn: Executive Director

After Commencement Date: San Francisco Port Commission
Pier One
San Francisco, CA 94111
Attn: Director of Real Estate

Sublandlord's Address for Notices:

Before Commencement Date: AMB Property Corporation
505 Montgomery Street
San Francisco, CA 94111
Attn: Ms. Janice Thacher

After Commencement Date: AMB Property Corporation
Pier One
San Francisco, CA 94111
Attn: Ms. Janice Thacher

Premises: As shown on Exhibit A
(Suite No. to be determined)

Rentable Area of Premises: 52,475 square feet

Use: General office use and meeting use

Term: Approximately fifty (50) years

Estimated Commencement Date: December 1, 2000

Expiration Date: Expiration of Master Lease

Monthly Base Rent: Lease Years 1 through 5: \$153,052.00 per month (\$2.92 per rentable square foot per month, \$35.00 per rentable square foot per year).
Lease Years 6 through 10: \$181,367.00 per month (\$3.46 per rentable square foot per month, \$41.48 per rentable square foot per year).
Increase to fair market value on the 10th anniversary and every 10 years thereafter

Subtenant's Pro Rata Share: 34.6%

EXHIBITS:

- Exhibit A - Site Map**
- Exhibit A-1 Diagram of Expansion Space**
- Exhibit B - Work Letter**
- Exhibit C - Form of Memorandum of Commencement Date and Amendment of Basic Sublease Information**
- Exhibit D - Rules and Regulations**

Each reference to Basic Sublease Information in the provisions of the Sublease shall incorporate the applicable Basic Sublease Information specified herein. In the event of any conflict between any Basic Sublease Information and the Sublease, the Sublease shall control.

FIRST AMENDMENT TO LEASE

This First Amendment to Lease is made and entered into as of this ____ day of November, 2000 by and between the City and County of San Francisco, acting by and through the San Francisco Port Commission (the "Port"), and AMB Property, L.P., a Delaware limited partnership ("Tenant").

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES.

A. On or about August 2, 1999, the Port and Tenant entered into that certain Lease, dated as of such date (the "Lease"), for the redevelopment and use of that certain property known as Pier 1, as more particularly described in the Lease (the "Property").

B. Pursuant to the Lease and that certain Development Agreement between the Port and Tenant dated as of March 9, 1999, Tenant has undertaken development of Pier 1, and in connection therewith is entering into a limited liability operating agreement (the "Operating Agreement") to form AMB Pier One LLC, a California limited liability company (the "LLC") with Banc of America Historic Ventures LLC (the "Tax Credit Investor") as an historic tax credit investor, all as anticipated pursuant to various provisions of the Lease. Under the terms of the Operating Agreement, Tenant will be required to obtain permitted financing of the Tenant's leasehold interest in the Property.

C. Pursuant to Port Commission Resolution No. 99-17, and Board of Supervisors Resolution No. 329-99, the Port Commission and Board of Supervisors authorized the Port's Executive Director to enter into any additions, amendment or other modifications to the Lease that the Executive Director determines, in consultation with the City Attorney, are in the best interests of the Port, do not decrease the rent or otherwise materially increase the obligations or liabilities of the Port and are necessary or advisable to complete the transaction contemplated in the Lease and effectuate the purpose and intent of those Resolutions, such determination to be conclusively evidenced by the execution and delivery of the Executive Director of the Lease and any amendments thereto.

D. In order to facilitate the tax credit transaction and related permanent financing, the Parties desire to make certain clarifications and modifications of the Lease, the Parties hereto are prepared to make such clarifications and modifications in the form of this First Amendment to Lease, and the Executive Director has determined

2

7

10 11

that such changes are in the best interests of the Port, do not decrease the rent or otherwise materially increase the obligations or liabilities of the Port and are necessary or advisable to complete the transaction contemplated in the Lease and effectuate the purpose and intent of the Port Commission and Board of Supervisors.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

Section 1. Historic Tax Credit Investment

(a) Section 2.3(b) of the Lease is hereby amended in its entirety to read as follows:

Share of Historic Tax Credits. Under the DA, Tenant is required to use good faith efforts to construct the Project in such a manner as to qualify for 20% federal income tax credits for historic rehabilitation, pursuant to Internal Revenue Code § § 38 and 47, and 16 U.S.C.A. § 470 et seq. and applicable regulations ("Historic Tax Credits"). Tenant shall use its best efforts to diligently obtain an investor for, or otherwise take advantage of, such Historic Tax Credits at a value equal to or higher than that for comparable historic rehabilitation projects. For purposes hereof, the term "Historic Tax Credit Investment Proceeds" shall mean the amounts (net of any sales commissions, reasonable legal fees and other actual out-of-pocket costs incurred in obtaining the investor for the Historic Tax Credit) Tenant receives from an investor (the "Investor") in an investment entity of which Tenant or an Affiliate is a member or partner in consideration for the allocation to such Investor of the Historic Tax Credits and other tax-related benefits applicable to the Initial Improvements, minus the net present cost to Tenant (directly or through the LLC) as of the Rent Commencement Date, using a discount rate of two hundred and fifty basis points (250 bp) per quarter, of (i) any projected distribution of cash flow and allocation of tax losses to the Investor, (ii) any projected payment to the Investor at such time as the Investor sells, assigns or transfers all or a substantial portion of its interest in the entity to Tenant, an Affiliate, or their successors and assigns (the "Investor Interest Sale"), (iii) any out of pocket costs incurred by Tenant (directly or

through the LLC) to Investor or other third parties, including payments under Tenant's tax credit, operating deficit or completion guaranties and any distribution of extraordinary cash proceeds, pursuant to the Operating Agreement and any documents executed in connection therewith, and (iv) any prepayment penalty associated with the initial financing required as a result of the Investor Interest Sale. Port and Tenant shall each be entitled to 50% of the Historic Tax Credit Investment Proceeds. Tenant shall retain the Port's 50% share of the Historic Tax Credit Investment Proceeds and apply such 50% share towards reducing the Total Construction Costs of the Project, thereby increasing Minimum Rent as further provided in Section 2.3(c)(iii) hereof. All costs deducted from amounts received from Investors to calculate the Historic Tax Credit Investment Proceeds shall be excluded from the Certified Construction Costs.

(b) The following new language is hereby added at the end of Section 2.3(c)(iii) of the Lease:

Anything to the contrary in this Lease notwithstanding, upon an Investor Interest Sale, the Historic Tax Credit Investment Proceeds shall be recalculated (the "Actual Tax Credit Value") based upon the actual amounts received from the Investor, the actual allocation of cash flow and tax losses to the Investor over the life of the Investor's investment in the investment entity until the date of the Investor Interest Sale, any distribution of extraordinary cash proceeds, the actual amounts paid by Tenant to the Investor at the time of the Investor Interest Sale, any prepayment penalty associated with the initial financing required as a result of the Investor Interest Sale and any out of pocket costs incurred by Tenant (directly or through such investment entity) to Investor or other third parties, including payments under Tenant's tax credit, operating deficit or completion guaranties, pursuant to the Operating Agreement and any documents executed in connection therewith. Within ninety (90) days of such Investor Interest Sale, Tenant shall submit to Port a statement describing the calculation of the Actual Tax Credit Value. The Port shall have sixty (60) days from

receipt of the statement to object to such calculation, and failure to timely object shall be deemed approval of the statement. Upon determination of the Actual Tax Credit Value, the Minimum Rent adjusted pursuant to Section 2.3(c)(iii) hereof that was due and payable by Tenant between the Rent Commencement Date and the date the Actual Tax Credit Value is approved by the Port, or otherwise determined by arbitration or the courts shall be recalculated to determine the amounts that would have been payable if such rent adjustments had been calculated based on the Actual Tax Credit Value. If Port has received either less or more such adjusted Minimum Rent than Port would have received had the Minimum Rent adjustment been calculated based on the actual Tax Credit Value, then in the case of overpayment by Tenant, Tenant shall be allowed to take a rent credit against all of the Minimum Rent due under this Lease until it has recovered the full amount of the overpayment. In the case of an underpayment, Tenant shall promptly pay Port the amount of such underpayment. After the date of such recalculation, the Minimum Rent shall be prospectively adjusted upward or downward, as the case may be, by the difference between Minimum Rent based upon the originally projected Historic Tax Credit Investment Proceeds and Minimum Rent based upon the Actual Tax Credit Value.

Section 2. Participation in Proceeds from Sale of Lease.

Section 16.1(i) of The Lease is hereby amended in its entirety to read as follows:

Participation in Proceeds from Sale of Lease. Upon an assignment, sale, or other transfer of Tenant's entire interest in this Lease or upon the occurrence of a Significant Change (other than an assignment to accommodate sale of Historic Tax Credits as described in Section 16.1(j)) occurring at any time and from time to time during the Term, then Tenant shall pay to Port as Additional Rent hereunder, fifty percent (50%) of all sums paid or payable to Tenant in connection with this Lease by the transferee after deducting the following:

- (i) expenses for verifiable, reasonable and customary brokerage commissions,
- (ii) the value of Tenant's trade fixtures conveyed, and
- (iii) other expenses actually paid or obligations (excluding Leasehold Mortgages or other debt or financing obligations) incurred by Tenant in connection with the transfer
- (iv) in the case of the first transfer of this Lease by Tenant to a third party pursuant to Section 16.1(i) hereof, (the "Initial Transfer"), any unamortized cost of the Initial Improvements and Subsequent Construction based upon the actual construction costs thereof based on a straight-line amortization basis over the Term remaining at the time of sale; and
- (v) in the case of any subsequent transfer after the Initial Transfer, the gross purchase price paid by the transferee to the prior tenant in consideration for the transfer, plus the actual construction cost of any Subsequent Construction incurred after the immediately preceding transfer less depreciation calculated in accordance with generally accepted accounting practices.

Section 3. Payment of Rent

Effective July 1, 2001, notwithstanding the provisions of Section 2.4 of the Lease and Section 2D of that certain Sublease by and between Tenant, as Sublessor, and the Port, as Sublessee, dated as of August 2, 1999, (the "Port Sublease") providing for set off of rent, such sections shall apply only after a default by the Port, as Sublessee under the Port Sublessee, or by AMB, as Tenant under the Lease, as the case may be, and unless or until such default occurs, each party shall pay its rent under the Master Lease or Sublease by cash payment as and when the same falls due.

Section 4. Ratification

The Lease, as modified hereby, shall remain in full force and effect.



IN WITNESS WHEREOF, the Parties have executed this First Amendment to Lease as of the day and year first above written.

TENANT

AMB PROPERTY, L.P.,
a Delaware limited partnership

By: AMB PROPERTY CORPORATION, A Maryland
corporation



By: Luis A. Belmonte

Its: ~~Managing Director~~ *Executive Vice President* 

PORT

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

By: 

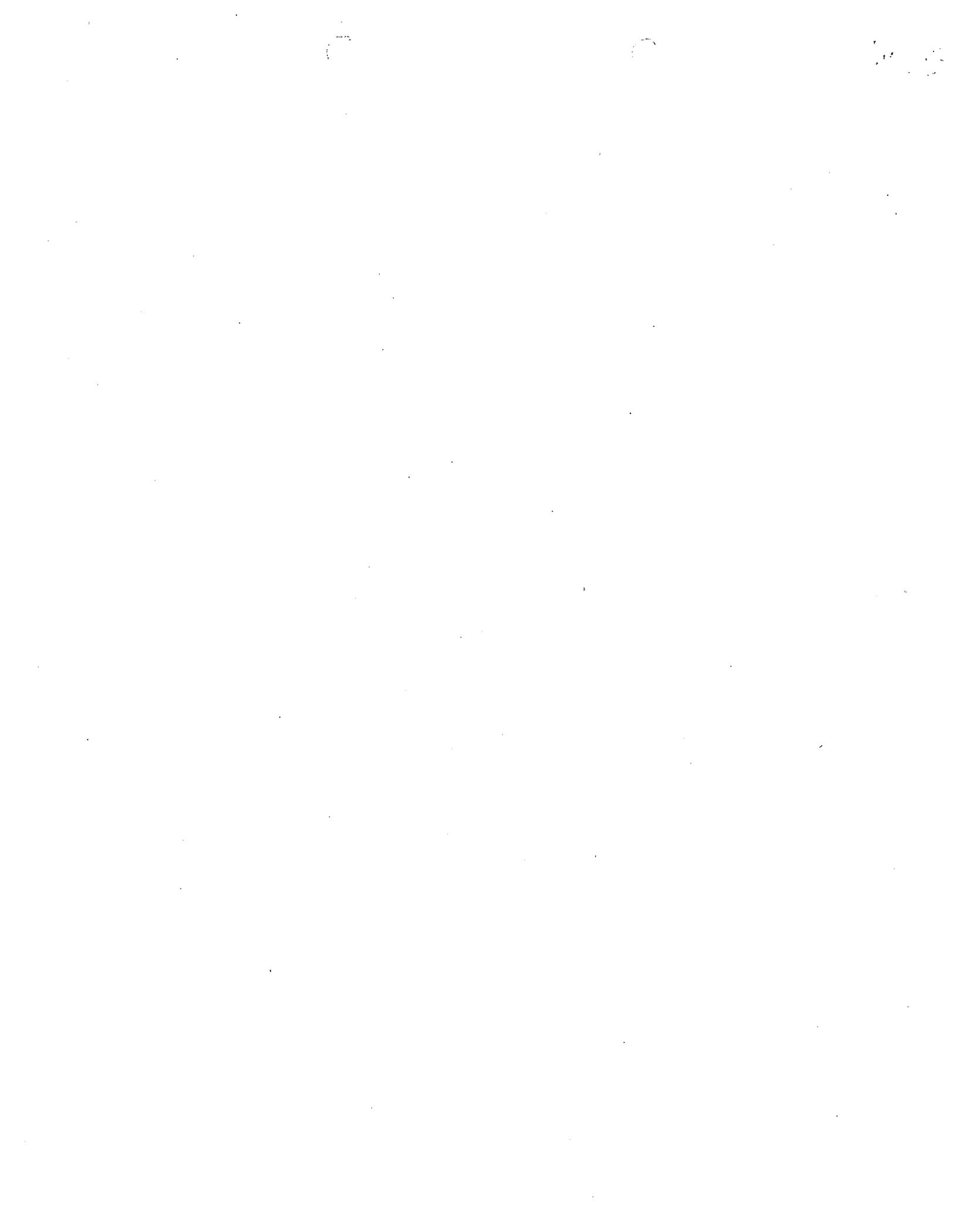
Douglas F. Wong
Executive Director

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By: 

Neil H. Sekhri
Assistant Port General Counsel



CITY AND COUNTY OF SAN FRANCISCO
WILLIE LEWIS BROWN, JR., MAYOR

LEASE

between the

**CITY AND COUNTY OF SAN FRANCISCO,
THROUGH THE SAN FRANCISCO PORT COMMISSION**

Port

and

AMB PROPERTY, L.P., a Delaware limited partnership

Tenant

for real property and improvements located at Pier 1

Dated as of August 2, 1999

Douglas F. Wong
Executive Director

SAN FRANCISCO PORT COMMISSION

Denise McCarthy, President
Kimberly Brandon, Vice President
Michael Hardeman, Commissioner
Brian McWilliams, Commissioner
Pius Lee, Commissioner

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LEASE

THIS LEASE (this "Lease"), dated for reference purposes as of August 2, 1999, 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 ("Port"), and AMB PROPERTY, L.P., a Delaware limited partnership ("Tenant").

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

A. On June 24, 1997, the Port Commission approved the Waterfront Land Use Plan, including the Design and Access element. The Waterfront Land Use Plan was the culmination of an intensive seven year planning process for the San Francisco waterfront pursuant to Proposition H, adopted by the voters in November 1990. In the fall of 1997, the Planning Commission and the Board of Supervisors unanimously adopted amendments to the City's General Plan and Planning Code incorporating the Waterfront Plan policies and programs.

B. One of the first areas of Port land slated for development under the Waterfront Land Use Plan and implementing legislation is the Ferry Building Harbor Area, bounded by Pier 1 in the north, the Agricultural Building to the south, the Bay to the east, and a portion of the mid-Embarcadero roadway to the west. In addition to Pier 1, this area includes the Ferry Building, Ferry Building Plaza and ferry terminals.

C. The Mid-Embarcadero project, which will create a world class public plaza on the land side of the Ferry Building and allow completion of the new waterfront transit system, is presently under construction, and is anticipated to be completed in 2000. In addition, the Port Commission has approved and funded the Downtown Ferry Terminal Project, that adds two ferry berths, provides seismically-secure access to these two and four other berths, and creates full perimeter public access around the Ferry Building, generating a total of 36,000 new square feet of public access space. Phase II, as planned, will add another four ferry berths and expand public access by another 34,000 square feet. The Port plans to implement this phase as demand warrants.

D. The Ferry Building is the centerpiece of the Port's overall program of improvements for this area of the harbor. The Port's objectives for the Ferry Building are for a major rehabilitation of this historic landmark to a standard commensurate with the substantial public investment in the transportation facilities and public open space surrounding the building. Public-oriented uses on the ground floor will include a mix of public, retail, and commercial uses appropriate to a public gathering place to attract people to use the downtown ferry terminal and enjoy waterfront recreational opportunities. The Port Commission is negotiating with Wilson Cornerstone to yield a newly renovated Ferry Building, improved to federal historic preservation tax credit standards, to anchor San Francisco's waterfront, which renovation is anticipated to commence in 2001.

E. The Port's plan for improvements to the Ferry Building Harbor Area also includes an historic rehabilitation of the adjacent Pier 1 bulkhead and shed. The foremost objectives for the Pier 1 project are to achieve renovation of Pier 1 to preserve the historic integrity and aesthetic character of the Ferry Building Harbor Area, to implement the Port's public access plan for the Ferry Building Harbor Area, and to facilitate renovation of the Ferry Building and establish a highly visible public presence for the Port in the Ferry Building Harbor Area by accommodating Port's administrative offices.

F. By a Request for Interest and Qualifications ("RFI&Q"), dated January 21, 1998, the Port solicited submittal of interest and qualifications from qualified parties to develop and master lease Pier 1 as a maritime-related office complex. The Port Commission chose AMB Property, L.P. based on its commitment to occupy the building as a project manager and co-tenant and on its financial capacity, development concept, responsiveness to public access and public trust objectives, and shorter lease term (50 years), and the opportunity for the Port to participate in the economic benefits of the Project. AMB's office requirements were also uniquely adaptable to the architectural limitations that historic preservation imposes on this Project.

G. Based on the foregoing, the Project furthers the Burton Act and public trust purposes of preserving an historic marine resource, supporting maritime commerce in the form of high quality maritime office space for the Port and other maritime users, and promoting public access to the Bay and shoreline.

H. The Port and Tenant have entered into a Development Agreement, dated as of March 9, 1999 ("DA"), governing the conditions to delivery of the Premises to Tenant for development of the Initial Improvements, and the rights and obligations of the Parties to develop the Initial Improvements.

I. All conditions to delivery of the Premises pursuant to the DA have been satisfied or waived, and the Parties now desire to enter into this Lease, upon all of the terms and conditions hereof.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. PREMISES; TERM

1.1 Premises.

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the real property in the City and County of San Francisco, California, located at Pier 1, as more particularly described in Exhibit A attached hereto (the "Property"), including

all existing buildings, structures and substructures affixed thereto, together with all rights, privileges and licenses appurtenant to the Property and owned by Port, and the Improvements hereafter constructed on the Property (subject to Section 9.2). The Property is comprised of approximately 127,692 square feet of pier, shed, bulkhead, water and land surface area, and is shown generally on the Site Plan attached hereto as Exhibit B. The Property and all other Improvements now and hereafter located on the Property are referred to in this Lease as the "Premises." The Parties reserve the right, upon mutual agreement of the Port's Executive Director and Tenant, to enter into one or more memoranda of technical corrections hereto to reflect any non-material changes in the legal description and square footages of the Property occurring during or after the development of the Project, and upon full execution thereof, such memoranda shall be deemed to become a part of this Lease.

(b) Permitted Title Exceptions. The interests granted by Port to Tenant pursuant to Subsections 1.1(a) are subject to (i) the matters reflected in Exhibit C (the "Permitted Title Exceptions"), and (ii) such other matters as Tenant shall cause or suffer to arise subject to the terms and conditions of this Lease.

(c) Subsurface Mineral Rights. Under the terms and conditions of Section 2 of the Burton Act, the State of California ("State") has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Property. In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Property, and specifically located in Zone 3, California Grid System, at a point where X equals 1,453,500 and Y equals 477,500, extending 1,000 feet west, thence 1,000 feet south, thence 1,000 feet east, thence 1,000 feet north, ending at said point of beginning; provided that such right shall not be exercised so as to disturb or otherwise interfere with the leasehold estate, including the ability of the Property to support the Improvements. Port shall have no liability under this Lease arising out of any exercise by the State of such mineral rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability).

(d) "AS-IS WITH ALL FAULTS". TENANT AGREES THAT THE PREMISES ARE BEING LEASED BY PORT, AND ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH ALL FAULTS". TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF THE OTHER INDEMNIFIED PARTIES, NOR ANY AGENT OF ANY OF THEM, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE OR OPERATION OF THE PROJECT, THE COMPLIANCE OF THE PREMISES OR THE PROJECT WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR, EXCEPT AS MAY BE SPECIFICALLY PROVIDED IN THIS LEASE OR THE DA, WITH

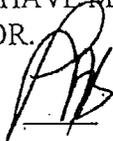
RESPECT TO ANY OTHER MATTER PERTAINING TO THE PREMISES OR THE PROJECT OR ANY APPURTENANCES TO THE PREMISES.

As part of its agreement to accept the Property in its "As Is With All Faults" condition, effective upon Delivery of the Property, the Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, the Port, the City, and their Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise an account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Property, including, without limitation, any Hazardous Materials in, on, under, above or about the Property (including, but not limited to, soils and groundwater conditions), and (ii) any Laws applicable thereto, including without limitation, Hazardous Materials Laws.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with 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 EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Tenant's Initials:



The Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, the Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

(e) Berthing Rights.

(i) Rights of Tenant. The Parties acknowledge that this Lease does not provide Tenant with water access or vessel berthing rights alongside the Premises. Tenant shall not berth or allow the berthing of vessels alongside the Premises without the Port's prior written consent, which consent may be given, withheld, or conditioned in Port's sole discretion. If Port grants its consent, Port may require that Tenant enter into a separate berthing agreement governing such berthing, including payment of berthing fees, in consideration for such berthing rights.

(ii) Reservation of Port Rights. Port reserves the right to allow the berthing of vessels alongside the Premises from time to time in the event of an emergency as determined by Port in its absolute discretion, at such location and for such duration as is determined by Port in its reasonable discretion to be necessary to accommodate such event of emergency. Port shall use good faith efforts and shall cooperate with Tenant to minimize

interference by any such emergency berthing with the operation or use of the Premises by Tenant or its Subtenants. Port may berth vessels alongside the Premises on a non-emergency basis with Tenant's prior written consent, not to be unreasonably withheld. It shall be reasonable for Tenant to withhold its consent if the berthing would materially interfere with the quiet enjoyment or views of Tenant or its Subtenants (other than Port), would materially interfere with dedicated public access on the Premises, or would materially increase Tenant's operating expenses for the Premises.

1.2 Term.

The Term of this Lease shall commence on the date Port delivers possession of the Property to Tenant in accordance with the DA (the "Commencement Date"). The Term of this Lease shall expire on the date that is fifty (50) years thereafter, unless earlier terminated in accordance with the terms of this Lease. The period from the Commencement Date until such expiration date is referred to as the "Term." Following the delivery of possession of the Property to Tenant, the Parties shall execute and deliver a memorandum confirming the date on which the Commencement Date occurred, provided that failure of the Parties to execute such memorandum shall not delay or modify the Commencement Date or affect the rights or obligations of the Parties under this Lease.

1.3 Definitions.

All initially capitalized terms used herein are defined in Section 44 or have the meanings given them when first defined.

1.4 Relationship of Lease to DA.

This Lease describes the rights and obligations of Tenant and Port during the Term. This Lease shall also be subject to the provisions of the DA until the Completion of the Improvements by Tenant in accordance with the DA. Until Completion, the DA will govern the development of the Initial Improvements in the event of any inconsistency between this Lease and the DA. From and after Completion, this Lease will govern the rights and obligations of the Parties with respect to the Premises. The recordation of a Certificate of Completion under the DA shall conclusively establish, for the purposes of this Lease, that all requirements of the DA relating to the construction and completion of the Improvements have been waived or satisfied, and that the DA is no longer applicable. If at such time, there exist any Deferred Items (as defined in the DA), Tenant shall be responsible under this Lease for completing such Deferred Items in a timely manner and in accordance with good construction and engineering practices. The Parties acknowledge that any and all provisions contained in the DA which the Parties intend to have continuing application following the recordation of a Certificate of Completion have been inserted by the Parties into this Lease as well.

1.5 Relationship of Lease to Port Sublease.

Concurrent with the Commencement Date hereof, Tenant, as sublandlord, and Port, as Subtenant, are entering into the Port Sublease of approximately 52,475 rentable square feet of the Premises (the "Port Sublease Premises"). Under the Port Sublease, Tenant will sublease the Port Sublease Premises to Port for a term that, upon delivery of the Sublease Premises to Port, will be coterminous with the Term hereof. The Port Sublease contains provisions under which Tenant will sublease the Port Sublease Premises to Port, including without limitation, Port's responsibility to reimburse Tenant its pro rata share of certain operating expenses and Port's responsibility for certain maintenance to the Port Sublease Premises.

SECTION 2. RENT

2.1 Tenant's Covenant to Pay Rent.

During the Term of this Lease, Tenant shall pay Rent for the Premises to Port at the times and in the manner provided in this Section 2.

2.2 Rent Definitions.

The following terms shall be defined as set forth below.

"Additional Rent" as defined in Section 2.10.

"Certified Construction Costs" as defined in Section 6.23(b) of the DA. _

"Projected Total Rental Income" means Five Million Five Hundred Seventy-Nine Thousand One Hundred Twenty-Seven and no/100 Dollars (\$5,579,127.00), subject to adjustment as set forth in Section 2.3(c)(ii) hereof, which is the total amount of base rent projected to be initially generated or imputed from the occupancy of the Premises by the Port, Tenant (based upon Tenant's Fair Rental Value as defined in Section 2.5(b)(iv)), and any other Subtenants, as more particularly described in the Budget attached as Exhibit D hereto.

"Minimum Rent" means the annual minimum rent specified in Section 2.3, payable by Tenant to Port.

"Participation Rent" means the participation rent payable to Port by Tenant under Section 2.5.

"Port Rent" means the monthly base rent and monthly amortization of Port tenant improvement costs over standard payable by Port to Tenant under Section 2.A and Exhibit B (Work Letter Agreement) of the Port Sublease, as adjusted from time to time pursuant to the provisions of the Port Sublease.

"Rent" means the sum of Minimum Rent, Participation Rent and Additional Rent.

"Total Construction Costs" means the amount of "Total Construction Costs" identified in the portion of the Budget identified as "Construction Budget" attached hereto as Exhibit D.

2.3 Minimum Rent.

(a) Minimum Rent. Commencing on the date of Completion of all or any portion of the Initial Improvements ("Rent Commencement Date"), and for the remainder of the Term, Tenant shall pay to Port, as Minimum Rent, the annual sum of One Million Seven Hundred Eighty-Two Thousand Eight Hundred Fifty Nine and 00/100 Dollars (\$1,782,859.00) subject to adjustment in accordance with Section 2.3(c). During the period between the Commencement Date and the Rent Commencement Date, no Minimum or Participation Rent will be due. If Completion of a portion of the Initial Improvements occurs prior to Completion of all of the Initial Improvements required to be constructed under the DA, the amount of Minimum Rent due and payable shall be prorated based upon the percentage that the Initial Improvements Completed bears to the entire Premises. In no event shall such proration of Minimum Rent continue for more than six (6) months after the Completion of any portion of the Initial Improvements, regardless of whether or not all of the Initial Improvements are Completed at such time, except to the extent that delay in the Completion of the Improvements occurs solely as a result of the Port's actions in its proprietary (but not regulatory) capacity. In such event, the Minimum Rent shall continue to be prorated based upon the percentage that the Initial Improvements Completed bears to the entire Premises only for the period of time that Completion of the Port's Improvements are delayed solely as a result of the Port's actions in its proprietary (but not regulatory) capacity.

(b) Share of Historic Tax Credits. Under the DA, Tenant is required to use good faith efforts to construct the Project in such a manner as to qualify for 20% federal income tax credits for historic rehabilitation, pursuant to Internal Revenue Code §§ 38 and 47, and 16 U.S.C.A. § 470 et seq. and applicable regulations ("Historic Tax Credits"). Tenant shall use its best efforts to diligently obtain an investor for, or otherwise take advantage of, such Historic Tax Credits at a value equal to or higher than that for comparable historic rehabilitation projects. Port and Tenant shall each be entitled to 50% of the total proceeds received from the entity investing in the Historic Tax Credits net of any sales commissions and other actual out-of-pocket costs incurred in obtaining the investor for the Historic Tax Credits (the "Historic Tax Credit Investment Proceeds"). Tenant shall retain the Port's 50% share of the Historic Tax Credit Investment Proceeds and apply such 50% share towards reducing the Total Construction Costs of the Project, thereby increasing Minimum Rent as further provided in Section 2.3(c)(iii) hereof.

(c) Minimum Rent Adjustments. The Minimum Rent set forth in Section 2.3(a) hereof is based upon the difference between (1) the Projected Total Rental Income and (2) a total return to Tenant of eleven percent (11%) per year on and of capital based on the Total Construction Costs; provided, however, that Tenant's administrative costs

and any costs involved in obtaining debt financing other than financing for construction of the Initial Improvements at customary rates for comparable construction-only loans shall be excluded from the Total Construction Costs and shall not be used for purposes of determining Minimum Rent under the Lease, but shall be the sole responsibility of Tenant. Notwithstanding Section 2.3(a) above, the Minimum Rent for the Term shall be adjusted as of the Rent Commencement Date in accordance with this Section 2.3(c). To the extent that Minimum Rent is adjusted in accordance with this Section 2.3(c), the Parties will execute an Addendum to this Lease to reflect such adjustments; however, failure to do so shall not relieve Tenant of its obligation to pay such adjusted Minimum Rent.

(i) Adjustment based upon Certified Construction Costs.

(A) Upwards Adjustment in Minimum Rent. If the final Certified Construction Costs (as defined in Section 6.23(b) of the DA) are less than the Total Construction Costs, then the Minimum Rent shall be adjusted upwards as of the Rent Commencement Date by eleven percent (11%) of the difference between the Total Construction Costs and the Certified Construction Costs until such point, if any, as the Minimum Rent equals the Port Rent due for the 1st year of the Port Sublease. After such point, Minimum Rent shall be further adjusted upwards by five and ½ percent (5.5%) of any difference between the Total Construction Costs and the Certified Construction Costs remaining after the foregoing 11% adjustment equals the Minimum Rent and the Port Rent due for the 1st year of the Port Sublease.

(B) Downward Adjustment in Minimum Rent: Floor. If the final Certified Construction Costs are more than the amount identified as Total Construction Costs set forth in the Budget, Minimum Rent will be adjusted downward as of the Rent Commencement Date by eleven percent (11%) of the difference between the Total Construction Costs and the Certified Construction Costs. In no event will Minimum Rent be adjusted under this Section 2.3(c)(i)(B) to be less than a guaranteed minimum of One Million Three Hundred Fifty-One Thousand Nine Hundred Sixty-Two and 00/100 Dollars (\$1,351,962.00); provided, however, such guaranteed minimum will be subject to further adjustment in accordance with Sections 2.3(b)(ii)-(iv) below. That guaranteed minimum amount is based upon a maximum guaranteed total construction cost of \$41,804,485.00, i.e. the Construction Costs subtotal shown on Exhibit D plus a maximum construction and design contingency of \$4,261,350.00 (representing a 15% construction and design contingency) rather than the \$0.00 contingency shown on Exhibit D.

(C) Administrative Matters. In the event the Certified Construction Costs are not available on the Rent Commencement Date, then within sixty (60) days after Tenant submits the Statement of Certified Construction Costs to Port in accordance with Section 6.03(b) of the DA, Minimum Rent will be adjusted upwards or downwards retroactively to the Rent Commencement Date. Actual construction costs shall be identified as line items in the revised Budget showing the Certified Construction Costs which shall establish the Minimum Rent for the Term and shall replace the Total Construction Costs shown on Exhibit D.

(ii) Adjustment Based upon Changes in Usable Square Footage. The amount of Projected Total Rental Income used to calculate the Minimum Rent set forth in Section 2.3(a) above relies upon the usable square feet of the Premises to be occupied by the Port, Tenant, and any Subtenants, as shown on the part of the Budget attached as Exhibit D under the heading of Tenant Rental Income (Triple Net). The Parties acknowledge that the actual amount of such usable square feet upon Completion allocated to each occupant may be different from the amounts shown on the Budget. If the actual usable square feet of any of the space occupied by Port, Tenant, other Subtenants or the Pier 1 Deli (all as identified in the Budget) differ from that shown on the Budget, then effective as of the Rent Commencement Date, the Projected Total Rental Income shown on Exhibit D shall be recalculated by taking the actual useable square feet as constructed for each space plus a 15% load thereon for each space and multiplying such figure for each space by the applicable rent per square foot shown on Exhibit D. Based on such recalculation, Minimum Rent shall be adjusted within ninety (90) days after Completion to reflect the difference between the Projected Total Rental Income as recalculated in accordance with this paragraph and 11% of the Total Construction Costs as adjusted in accordance with Sections 2.3(c)(i)(iii) and (iv) hereof.

(iii) Adjustment Based Upon Historic Tax Credits. The amount of "Total Construction Costs" set forth in the Budget used to determine Minimum Rent hereunder includes a contribution by the Port of its fifty percent (50%) share of the estimated twenty percent (20%) Historic Tax Credits Investment Proceeds, as described in Section 2.3(b). The Parties recognize that the Project will not qualify for the 20% Tax Credit unless and until the National Park Service ("NPS") certifies the historic rehabilitation of the Project after Completion of the Improvements and that the actual amount of tax credit will not be determined until such Completion. Therefore, on the Rent Commencement Date, Tenant shall pay to Port the Minimum Rent set forth in Section 2.3(a), subject to the adjustments of Sections 2.3(c)(i), (ii) and (iv). If as of or subsequent to the Rent Commencement Date the NPS certifies the Project for the 20% Historic Tax Credit and the Port's 50% share of the Historic Tax Credit Investment Proceeds received by Tenant for the 20% Historic Tax Credit from third Parties equals the amount shown in the Budget, then no subsequent adjustments to the Minimum Rent shall be made under this subsection (iii). If, as of or subsequent to the Rent Commencement Date, the NPS disapproves the Project for certification, or if the Historic Tax Credit Investment Proceeds is less than the amount of the Historic Tax Credit Investment Proceeds estimated in the Budget, then the Minimum Rent shall be adjusted downward by (i) 11% of that portion of the Port's 50% share of the tax credits that the NPS has not certified, or (ii) 11% of that portion of the Port's 50% share of the Historic Tax Credit Investment Proceeds estimated in the Budget not realized by Tenant through obtaining investors for such credits, as the case may be. If, as of or subsequent to the Rent Commencement Date, the NPS certifies the Project and Port's share of the Historic Tax Credit Investment Proceeds received by Tenant exceeds the amount of the Historic Tax Credit Investment Proceeds estimated in the Budget, then the Minimum Rent shall be adjusted upwards as of the Rent Commencement Date by 11% of the amount by which the Historic Tax Credit Investment Proceeds received by Tenant by a third party investor exceeds the Port's 50% share of the Historic Tax Credit Investment Proceeds estimated in the Budget. After certification and issuance of the historic tax credit, if any, there shall be no subsequent

adjustments in Minimum Rent if a recapture of the tax credit occurs for any reason, including, without limitation, a transfer of the Property or subsequent unapproved alterations to the Property (other than alterations undertaken directly by Port or City). Notwithstanding the foregoing, no adjustment in Minimum Rent shall occur if the NPS fails to certify the Project due to a material default in Developer's obligation to construct the Project in accordance with the plans approved by the NPS as more particularly described in Section 6.04(ix) of the DA. Any adjustments to Minimum Rent under this Section 2.3(c)(iii) shall be made within ninety (90) days after a determination of the tax credit in accordance herewith.

(iv) Adjustment Based Upon Capital Contributions by Port.

Port shall have the right to contribute capital towards the Construction Costs of the Project by paying a capital contribution to Tenant in such amount as determined by Port, in its sole discretion and as further limited by this subsection (iv), at any time within two (2) years following the Rent Commencement Date. If Port makes such a capital contribution, then within 30 days after such payment, the Minimum Rent shall be adjusted as of the date that Port paid the capital contribution to Tenant so that the calculation of Minimum Rent will reflect a decrease in the Certified Construction Costs by the amount of capital actually paid by Port towards the Certified Construction Costs. Notwithstanding the foregoing, the amount of capital that Port may contribute hereunder shall be limited to such amount as would increase the Minimum Rent payable hereunder to an amount not to exceed the Base Rent due to Tenant by Port under the Port Sublease for the first five (5) years of the Sublease Term.

(d) Manner of Payment. Tenant shall pay Minimum Rent to Port in advance, in equal monthly installments, beginning on the Rent Commencement Date, and thereafter on or before the first day of each and every calendar month during the Term. If the Rent Commencement Date occurs on a day other than the first day of a calendar month, or if the Term ends on a day other than the last day of a calendar month, then Minimum Rent for such fractional month shall be computed by dividing the annual Minimum Rent by 365 (or 366, if the year in question is a leap year), and multiplying the per-diem rental rate so computed by the number of days in such fractional month. In any instance where Minimum Rent is adjusted pursuant to Section 2.3(c)(i)-(iv) and such adjustment is to be effective as of the Rent Commencement Date, any amount due from Tenant to Port or from Port to Tenant by reason of such adjustment shall be payable within thirty (30) days after the date that such adjustment is made.

2.4 Rent Offset for Port Rent.

(a) The Parties acknowledge that Tenant is responsible to pay to Port Minimum Rent and Participation Rent under the terms of this Lease, and that Port is responsible to pay Port Rent to Tenant under the terms of the Port Sublease. Commencing on the rent commencement date of the Port Sublease, and thereafter on or before the first day of each and every calendar month during the Term, Tenant shall be entitled to offset against its monthly payment of Minimum Rent and Participation Rent, the Port Rent due to Tenant for that month, so long as Port exercises its right under the Port Sublease to offset against the Port Rent due for that month the amount of Minimum Rent and Participation Rent due hereunder.

Consequently, to the extent that Minimum Rent and Participation Rent hereunder for any given month exceed the amount of Port Rent for that month, the net Minimum Rent and Participation Rent due hereunder shall consist of the difference between the sum of Minimum Rent and Participation Rent, and the Port Rent, for that month, and Port's payment of Port Rent shall be \$0.00. To the extent that Minimum Rent and Participation Rent hereunder for any given month is less than the amount of Port Rent due for that month, then Tenant's payment of Minimum and Participation Rent hereunder shall be \$0.00, and Port's net payment of Port Rent due under the Port Sublease shall consist of the difference between the Port Rent and the Minimum Rent and Participation Rent due hereunder. The Parties acknowledge that Participation Rent is payable by Tenant on a quarterly basis, whereas Port Rent and Minimum Rent are payable monthly. Consequently, Port, at its election, may amortize such quarterly Participation Rent amounts due over a 3-month period commencing upon the first day of the month following the month in which the applicable Participation Rent payment is due for purposes of calculating the offset for the Port Rent. The following are examples of the foregoing concept:

Example 1 (Lease Rent Exceeds Sublease Rent)

Minimum and Participation Rent monthly payment due from Tenant under the Lease:	\$100,000.00
Monthly Port Rent due from Port under the Port Sublease:	\$80,000.00
Net Minimum and Participation Rent under this Lease:	\$20,000.00
Net Port Rent due under Sublease:	\$0.00

Example 2 (Sublease Rent Exceeds Lease Rent)

Minimum and Participation Rent monthly payment due from Tenant under the Lease:	\$100,000.00
Monthly Port Rent due under the Port Sublease:	\$120,000.00
Net Minimum and Participation Rent under this Lease:	\$0.00
Net Port Rent due under Sublease:	\$20,000.00

2.5 Participation Rent.

(a) Commencement. Commencing on the fifth anniversary date of the Rent Commencement Date and for the remainder of the Term, Tenant shall pay to Port, in addition to Minimum Rent, Participation Rent in accordance with this Section 2.5.

(b) Definitions.

(i) "Total Rental Income" means all payments, revenues, fees and amounts received by or for the account of Tenant from any Person for the Person's occupancy or use of any portion of the Premises. Total Rental Income includes, without limitation, all minimum rent, base rent, participation rent, percentage rent, parking charges, license fees, permit fees, and transfer premiums (described in Section 18.c. of the Port Sublease), received from any and all tenants, Subtenants, licensees, permittees, or parking users of the Premises, including without limitation, Port. If Tenant, or any Affiliate of Tenant, occupies a portion of the Premises, Total Rental Income will also include Tenant's Fair Rental Value of the portion of the Premises occupied by Tenant or its Affiliate. Total Rental Income also shall include Port's Fair Rental Value of the portion of the Premises occupied by Port. Total Rental Income shall exclude only the following items: (A) late fees and interest paid to Tenant from delinquent rental payments; (B) amounts refunded to Subtenants by Tenant for overpayment of minimum rent, percentage rent, or base rent; (C) payments to Tenant from Subtenants in excess of such Subtenants' base, minimum and percentage rentals that are attributable to the operating expenses of the Premises actually incurred by Tenant (without any profit to Tenant), including common area maintenance costs, taxes and insurance; (D) any customary leasing commissions and reasonable legal fees and expenses in connection with the subleasing of the Premises; and (E) payments to Tenant from Subtenants attributable to Tenant's actual costs incurred and paid for tenant improvements in excess of the Standard Tenant Improvement Allowance for areas of the Premises leased to Subtenants amortized over the term of such sublease on a straight-line basis pursuant to generally accepted accounting principles. For purposes hereof, the "Standard Tenant Improvement Allowance" will be Forty Dollars (\$40.00) per rentable square foot (inclusive of architecture and general conditions costs) for the initial subleases as of the Commencement Date, and for future subleases, will be as agreed to by the Parties based on comparable space at a comparable location in San Francisco, or if the Parties fail to agree, then as determined in accordance with the arbitration procedures set forth in Section 2.5(a)(v)(B) and (C).

(ii) "Excess Rental Income" means the Total Rental Income received by Tenant in excess of the Projected Total Rental Income.

(iii) "Participation Rent" means an amount equal to fifty percent (50%) of all Excess Rental Income, payable in accordance with this Section 2.5.

(iv) "Port's Fair Rental Value" means an initial triple net value for base rent payable under the Port Sublease as of the Commencement Date of Thirty Five and 00/100 Dollars (\$35.00) per square foot based upon the Rentable Area occupied by Port, which includes a fifteen percent (15%) load for common areas. Port's Fair Rental Value will be increased by eighteen and ½ percent (18.5%) effective the fifth (5th) anniversary of the Rent Commencement Date. On each ten-year anniversary of the Commencement Date (each, an "Adjustment Date"), Port's Fair Rental Value shall be adjusted upwards or downwards to equal the then Fair Market Value of the Premises until the next 10-year market rent adjustment, based upon the market rental rate for comparable office space in comparable

locations located in San Francisco. Determination of Port's Fair Rental Value shall also include a determination of the type, amount and frequency of built-in escalators to Port's Fair Rental Value (e.g. CPI increases or periodic percentage adjustments) for the applicable Adjustment Period based on comparable leases for comparable office space in comparable locations in San Francisco ("Interim Escalation"). Each 10 year adjustment to Port's Fair Rental Value and such Interim Escalation shall be determined in accordance with the procedures set forth in Section 2.B of the Port Sublease.

(v) "Tenant's Fair Rental Value" means an initial triple net value for base rent imputed hereunder as of the Commencement Date of Forty and 00/100 Dollars (\$40.00) per square foot based upon the Rentable Area occupied by Tenant, which includes a fifteen percent (15%) load for common areas. Tenant's Fair Rental Value will be increased by eighteen and ½ percent (18.5%) effective the fifth anniversary of the Rent Commencement Date. On each ten-year anniversary of the Commencement Date (each, an "Adjustment Date"), Tenant's Fair Rental Value shall be adjusted upwards or downwards to equal the then Fair Market Value of the Premises plus Interim Escalations until the next 10 year market rent adjustment, based upon the market rental rate and escalation terms for comparable office space in comparable locations located in San Francisco. Each 10 year adjustment to Tenant's Fair Rental Value, including the determination of the Interim Escalator, shall be referred to herein as Tenant's Adjusted Base Rent and determined as follows:

(A) Tenant shall determine the Adjusted Base Rent by using its good faith judgment based upon comparable office space in a comparable location in San Francisco, and Tenant shall submit to Port its determination of Tenant's Adjusted Base Rent no more than 180 days and no less than 90 days prior to each Adjustment Date. In the event Port and Tenant are unable to mutually agree on the Tenant's Adjusted Base Rent within thirty (30) days after delivery of the Tenant's notice to Port of its determination, then Tenant's Adjusted Base Rent of the Premises shall be set by appraisal, as provided below. In no event will the Adjusted Base Rent so determined be less than the base rent in effect as of the Rent Commencement Date.

(B) Within forty-five (45) days after the expiration of the thirty (30) day period specified above, each Party, at its cost and by giving notice to the other Party, shall appoint a real estate appraiser holding an M.A.I. designation with at least ten (10) years full-time commercial appraisal experience appraising comparable space in the City of San Francisco to prepare an appraisal of the Adjusted Base Rent for the ten (10) year period (the "Adjustment Period") succeeding the relevant Adjustment Date. If a Party does not appoint an appraiser within such 45 day period, the single appraiser appointed shall be the sole appraiser and shall prepare an appraisal of the Tenant's Adjusted Base Rent of the Premises for the Adjustment Period. Each appraiser shall conduct an independent appraisal within 45 days after appointment. If the Parties are unable to agree on the Tenant's Adjusted Base Rent for the Adjustment Period within sixty (60) days after receiving the appraisal(s), each appraiser shall notify the other in writing of its final appraisal for purposes of determining Tenant's Adjusted Base Rent in accordance herewith and the Parties shall attempt to elect a third appraiser meeting the qualifications stated in this paragraph. If they are unable to agree on the third appraiser, either Party, by giving ten (10) days' notice to the

other Party, may file a petition with the American Arbitration Association solely for the purpose of selecting a third appraiser who meets the qualifications stated in this paragraph. If a Party suggests the name of a third appraiser to the arbitration service, the Party shall also submit a declaration by the proposed third appraiser disclosing any work performed by such appraiser for either Party, any entity related to either Party, or their attorneys, principals, or officers, and any relationship between the third appraiser and either Party that could reasonably be construed as a conflict of interest. The Parties hereby waive any right to challenge the selection of the third appraiser, whether by the agreement of the first two arbitrators, or by the arbitration service, for any reason other than fraud, corruption or undue influence, and expressly waives any right to challenge the third appraiser based upon a conflict of interest by reason of work the third appraiser has performed for either Party, any entity related to either Party, or their respective attorneys, principals, or officers, and any relationship between the third appraiser and either Party that could be reasonably construed as a conflict of interest. Notwithstanding the foregoing, neither Party waives any challenge for a conflict of interest based on work performed by the third appraiser for either Party, any entity related to either Party, or their respective attorneys, principals, or officers, and any relationship between the third appraiser and either Party that could be construed as a conflict of interest, if the third appraiser fails to disclose such work to both Parties in the declaration. Each Party shall bear one-half (1/2) of the cost of any fee charged by the American Arbitration Association for appointing the third appraiser and one-half (1/2) of the third appraiser's fee.

(C) Within thirty (30) days after his or her appointment, the third appraiser shall conduct a hearing, at which Port and Tenant may each make supplemental oral and/or written presentations, with an opportunity for testimony by the first two appraisers and questioning by the Parties and the third appraiser. Within thirty (30) days following the hearing, the third appraiser shall select the appraised Tenant's Adjusted Base Rent determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the arbitrator, to the actual Tenant's Adjusted Base Rent. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the actual Tenant's Adjusted Base Rent. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease. The Tenant's Adjusted Base Rent for the Adjustment Period so determined shall be conclusive, final and binding on the Parties, except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time). Except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time), the provisions of Title 9 of the California Code of Civil Procedure shall not have any application to the appraisal procedure set forth herein.

Upon determination of Tenant's Adjusted Base Rent for the Adjustment Period, the Parties shall acknowledge by an addendum hereto the Tenant's Adjusted Base Rent (to be retroactive to the applicable Adjustment Date if determined after such date), provided that failure to do so shall not affect the effectiveness of the new Tenant's Adjusted Base Rent.

(c) Agreement to Pay; Determination. In addition to Minimum Rent, Tenant shall pay to Port on a quarterly basis Participation Rent in accordance with this Section 2.5.

On or before the last day of April, July, October and January throughout the Term, Tenant shall deliver to Port a statement ("Participation Rent Statement"), certified by Tenant to be true and correct, setting forth the Total Rental Income, by month during the preceding calendar quarter, and calculating the amount of Participation Rent payable to Port for the applicable quarter. Tenant shall include with the Participation Rent Statement payment to Port of the applicable amount of Participation Rent for such quarter. If this Lease terminates prior to the end of a quarter, payment of the Participation Rent for that portion of the quarter during which Total Rental Income is payable shall be determined and reported by Tenant to Port within thirty (30) days after Tenant ceases to conduct business on the Premises, but if this Lease terminates as a result of Tenant's default, including Tenant's insolvency, any amounts due hereunder shall be payable forthwith. If Port does not receive the Participation Rent Statement and Participation Rent when due, Tenant shall pay a late charge calculated at the greater of 10% of the Minimum Rent or ten percent (10%) of the Participation Rent (using an average of the Participation Rent for the prior six months as a base figure). In no event shall the late charge be less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars (\$500.00) as Indexed annually.

(i) Books and Records. Tenant shall keep accurate books and records according to generally accepted accounting principles consistently applied. "Books and records" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain a separate set of accounts, including bank accounts, to allow a determination of expenses incurred and revenues generated directly from the Premises. If Tenant operates all or any portion of the Premises through a Subtenant or Agent (other than Port), Tenant shall cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

(ii) Audit. Tenant agrees to make its books and records available to Port, or to any City auditor, or to any auditor or representative designated by Port (hereinafter collectively referred to as "Port representative"), for the purpose of examining said books and records to determine the accuracy of Tenant's reporting of Total Rental Income. Tenant shall cooperate with the Port representative during the course of any audit. Said books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to Port's representative for the purpose of auditing or re-auditing these accounts. If an audit is made within said four-year period and Port claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If Tenant operates the Premises through a Subtenant or Agent (other than Port), Tenant shall require such

Subtenant or Agent to provide the Port with the foregoing audit right with respect to the books and records of such Subtenant or Agent.

If an audit reveals that Tenant has understated its Total Rental Income for said audit period and has paid Port less than the amount of Participation Rent than it should have paid, Tenant shall pay Port, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Port. Port shall bear the cost of the audit unless Tenant understates its Total Rental Income for any audit period by three percent (3%) or more, in which case, Tenant shall pay the cost of the audit.

2.6 Manner of Payment of Rent.

Tenant shall pay Minimum Rent, Participation Rent, and Additional Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other person or at such other place as Port may from time to time designate by notice to Tenant. Minimum Rent and Participation Rent shall be payable at the times specified in Section 2.3 and 2.5 respectively without prior notice or demand. Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand", "promptly following notice", "upon receipt of invoice", or the like, then such Additional Rent shall be due ten (10) business days following the giving by Port of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

2.7 No Abatement or Setoff.

Tenant shall pay all Rent, including any and all Additional Rent, at the times and in the manner in this Lease provided without any abatement, setoff, deduction, or counterclaim, except as provided in Section 2.4, Section 12, and Section 13 hereof, and except as expressly provided under Article 31.O.2.c. of the Port Sublease (allowing Tenant the right to offset against its payment of Minimum Rent and Participation Rent hereunder damages, costs and expenses incurred by Tenant, as sublandlord thereunder, as a result of termination of the Sublease due to a failure of the City to appropriate and certify adequate funds).

2.8 Interest on Delinquent Rent.

If any installment of Minimum Rent or Participation Rent is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) business days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "Default Rate") equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant.

2.9 Late Charges.

Tenant acknowledges and agrees that late payment by Tenant to Port of Rent will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of Port's rights or remedies hereunder, Tenant shall pay a late charge equal to One Hundred Fifty Dollars (\$150.00), which charge shall be Indexed annually, plus reasonable Attorneys' Fees and Costs incurred by Port by reason of Tenant's failure to pay any Rent within ten (10) days of the due date of such Rent. Such late charge may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. The Parties agree that such late charge represents a fair and reasonable estimate of the cost which Port will incur by reason of a late payment by Tenant.

2.10 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or become due during or in connection with the Term of this Lease, whether foreseen or unforeseen, which are payable by Tenant to Port pursuant to this Lease, shall be deemed Additional Rent. Port shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Minimum Rent.

2.11 Net Lease.

It is the purpose of this Lease and intent of Port and Tenant that, except as specifically stated to the contrary in Section 2.7, all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, except as may be provided in this Lease or the Port Sublease, shall Port be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, except as otherwise expressly provided in Section 4.1(c), Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises and any Improvements, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in Sections 12 and 13, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to

terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

SECTION 3. USES

3.1 Permitted Uses.

Tenant shall use the Premises for office, meeting, restaurant, and public access uses substantially in accordance with the Scope of Development (including the Schematic Drawing of the Site Plan and Ground Floor Plan), attached hereto as Exhibit E, (collectively, the "Permitted Uses"), subject to priority for public trust-consistent office uses as described in Section 3.6 hereof, and for no other use without the prior written consent of the Port, not to be unreasonably withheld.

3.2 Advertising and Signs.

Tenant shall not allow the placement, construction or maintenance of any sign, advertisement, awning, canopy, banner or other exterior decoration on the Premises without obtaining Port's prior written consent. Any sign that Tenant or its Subtenants are permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease. Port shall not disapprove a signage request that otherwise complies with the Port's Sign Guidelines unless Port has other reasonable grounds for disapproval unrelated to the matters covered under the Port's Sign Guidelines.

3.3 Limitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

- (i) any activity that creates a public or private nuisance;
- (ii) any activity that is not within the Permitted Use;
- (iii) any activity or object that will overload or cause damage to the Premises;
- (iv) any activity that constitutes waste or nuisance to owners or occupants of adjacent properties, including, without limitation, Subtenants of the Premises. Such activities include, without limitation, the preparation, manufacture or mixing of anything that might emit any

objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises, subject to the provisions of Sections 10, 12 and 13 of this Lease, and without limitation on any right given Tenant to alter, modify, Restore, or construct Improvements;

(v) any activity that will in any way injure, obstruct or interfere with the rights of other Subtenants, or of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress;

(vi) use of the Premises for sleeping or personal living quarters;

(vii) any auction, distress, fire, bankruptcy or going-out-of-business sale on the Premises without the prior written consent of Port; and

(viii) any activity that is inconsistent with the Public Trust.

(b) Land Use Restrictions. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Port's reversionary interest in the Premises, or obtain changes in applicable land use laws or conditional use permits for any uses not provided for hereunder, in each instance without Port's prior written consent, which consent may be withheld in Port's sole discretion, and subject to the provisions of Section 6.

3.4 Premises Must Be Used.

Tenant shall use the Premises continuously for the Permitted Use specified above, subject to customary vacancies of office space that may arise from time to time. Tenant shall use its best efforts to lease any vacancies at the Premises at prevailing market rents as quickly as practicable; provided, however, that Tenant may allow vacancies to accommodate pre-committed options to lease or expansion options where it is infeasible to lease such space to other third Parties due to the short amount of time available prior to exercise of such option.

3.5 Public Access Areas.

Port hereby reserves reasonable access rights over the portion of the Premises consisting of the Public Access Areas so as to permit use of such areas by the general public consistent with the Public Trust, specifically recognizing, however, that (i) the public access areas labeled "Historic Railroad Corridor" on Exhibit E may be closed to the public after regular business hours Monday-Friday, 8:00 a.m. – 5:00 p.m. and on holidays, and (ii) the public access areas labeled "North Apron" on Exhibit E may be closed to the public from dusk to dawn.

3.6 Public Trust Uses.

The Project shall be developed to promote Public Trust objectives as described in

Recital E. Consequently, it shall be reasonable for the Port to withhold its consent to any material change in the types or square footages of the permitted uses described in Section 3.1 and in the Scope of Development if such changes would result in a violation of the Port's authority as trustee under the Burton Act, as reasonably determined by the Port Commission.

3.7 Rules and Regulations. Tenant shall include in the Port Sublease rules and regulations for the Premises in a form reasonably satisfactory to Port. Tenant may amend and/or supplement the rules and regulations from time to time, subject to the consent of Port which consent shall not be unreasonably withheld.

SECTION 4. TAXES AND ASSESSMENTS

4.1 Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes. Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or Tenant's leasehold estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)). Subject to the provisions of Section 5 hereof, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 5.

(i) Acknowledgment of Possessory Interest. Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the City's Assessor. Tenant further acknowledges that any Sublease or assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(ii) Reporting Requirements. San Francisco Administrative Code Sections 6.63-1, 6.63-2, 23.6-1 and 23.6-2 require that Port report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant shall provide such information as may reasonably be requested by Port to enable Port to comply with such requirements.

(iii) Exemption of Port Sublease Premises from Possessory Interest Taxes. Although Tenant is responsible for any and all possessory interest taxes levied upon Tenant's interest hereunder, the Parties also acknowledge that the portion of the Premises occupied by Port under the Port Sublease may fall within the exemption of Cal. Rev. & Tax Code §107.8(a) for so long as such premises are occupied and used by the Port. Cal. Rev. & Tax Code §107.8(a) provides that in evaluating the presence of independent possession necessary to establish a possessory interest under Rev. & Tax Code Section 107(a),

...the possession of, claim to, or right to the possession of, land or improvements pursuant to a lease is not independent if the lessee (1) is obligated simultaneously to sublease the property to the public owner of the property for all or substantially all of the lease period, (2) may not exercise authority and exert control over the management or operation of the property separate and apart from the policies, statutes, ordinances, rules and regulations of the public owner, (3) provides as part of the sublease that the public owner has the right to repurchase all of the lessee's rights in the lease, and (4) cannot receive rent or other amounts from the public owner under the sublease (including any amounts due with respect to any repurchase) the present value of which, at the time the lease is entered into, exceeds the present value of the rent or other amounts payable by the lessee under the lease.

The Parties intend that this Lease and the Port Sublease satisfy the requirements of Section 107.8(a) as follows: (1) the approximately fifty-year term of this Lease is coterminous with the Port Sublease; (2) the Port Sublease does not let Tenant exert any management or control over the Port Sublease premises other than the Rules and Regulations set forth in Section 3.7 and certain other property controls primarily derived from the Port's requirements set forth in this Lease; (3) the Port has the option to repurchase all of the Tenant's rights in the Port subleased premises at any time during the Term, pursuant to Article V of the Port Sublease; and (4) the base rent paid by Port under the Port Sublease will never exceed the Tenant's rent payable to the Port hereunder attributable to the portion of the Premises subject to the Port Sublease.

Notwithstanding such exemption, Tenant shall be responsible for any and all possessory interest taxes and other taxes as provided in this Lease to the full extent such possessory interest tax is assessed against all or any portion of the Property. Port's responsibility to pay any portion of such taxes, including any possessory interest taxes in the event the Port Sublease premises becomes subject to a possessory interest tax, shall be governed solely by the Port Sublease.

(b) Other Impositions. Without limiting the provisions of Section 4.1(a), Tenant shall pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any

Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of Section 5, Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. As used herein, "Impositions" means all taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the Improvements or Personal Property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and Port on a daily basis.

(d) Proof of Compliance. Within a reasonable time following Port's written request which Port may give at any time and give from time to time, Tenant shall deliver to Port copies of official receipts from the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

4.2 Port's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 5, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, Port, at its sole option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Port shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which Port intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Port that it is contesting such Imposition pursuant to Section 5, then Port may thereafter pay such Imposition, and the amount so paid by Port (including any interest and penalties thereon paid by Port), together with interest at the Default Rate computed from the date Port makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Port within ten (10) business days following demand.

SECTION 5. CONTESTS

5.1 Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or

encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port. Tenant shall give notice to Port within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition 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, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, fines, penalties or other charges which may accrue as a result of any contest, and Tenant shall 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. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Port is a necessary Party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Port or any owner of the Property, Port, at the request of Tenant and at no cost to Port, with counsel selected and engaged by Tenant, subject to Port's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Port or any owner of the Property. Except as provided in the preceding sentence, Port shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Section 17, Tenant shall Indemnify Port for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which Port may be legally obligated to pay.

5.2 Port's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, Port may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Port to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Port shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. If Port undertakes any such contest, and 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, Port shall be responsible for complying with such condition as a condition to its right to contest. Port shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Port shall provide a statutory lien release bond or other security reasonably satisfactory to Tenant in any instance where Tenant's interest in the Property may be subjected to such lien or claim. Port shall not be required to pay any Imposition or lien being so

contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Tenant is a necessary Party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant, Tenant, at the request of Port and at no cost to Tenant, with counsel selected and engaged by Port, subject to Tenant's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Tenant, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant. Except as provided in the preceding sentence, Tenant shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding.

SECTION 6. COMPLIANCE WITH LAWS

6.1 Compliance with Laws and Other Requirements.

(a) Tenant's Obligation to Comply. Tenant shall comply, at no cost to Port, (i) with all applicable Laws (including Regulatory Approvals), (ii) with all Mitigation Measures imposed on the sponsor of the Project, (iii) with the requirements of all policies of insurance required to be maintained pursuant to Section 18 of this Lease, and (iv) with the DA (so long as it remains in effect). The foregoing sentence shall not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Port constitutes a Condemnation or an impairment of Tenant's contract with Port. In particular, Tenant acknowledges that the Permitted Uses under Section 3.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits, nor do such uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises, subject to the provisions of Sections 6.1(b).

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 6.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements and the Bulkhead and Substructure), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Sections 12 or 13, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to

terminate this Lease in whole or in part or to otherwise seek redress against Port. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation, except to the extent provided in Sections 12 , 13, 21.1 or 21.2.

(c) Proof of Compliance. Tenant shall promptly upon request provide Port with evidence of its compliance with any of the obligations required under this Section.

6.2 Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity as the holder of fee title to the Property for the public benefit consistent with the terms of the Public Trust, and not in its capacity as a regulatory agency of the City. Tenant understands that the entry by the Port into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including the Port itself in its regulatory capacity. By entering into this Lease, the Port is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in permitted uses, and any alterations or Subsequent Construction to the Premises, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction, including, but not limited to, BCDC, RWQCB, and the Army Corps of Engineers. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where Port will be required to act as a co-permittee, or where Tenant proposes Subsequent Construction which requires Port's approval under Section 10, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the Port) without first obtaining the approval of Port, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with Port in Tenant's efforts to obtain such Regulatory Approval, and Port shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency other than Port, if Port is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of Port whether on or off the Property, unless in each instance Port has previously approved such conditions in writing in Port's sole and absolute discretion. No such approval by Port shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, Port shall join, where required, in any application by Tenant for a BCDC or other required Regulatory Approval, and in executing such permit, provided that Port shall have no obligation to join in any such application or execute the permit if the Port does not approve the conditions imposed by BCDC or other regulatory agency under such permit as provided herein. All costs associated with applying for

and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to Port or the City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and Port shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Section 17, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which Port may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

SECTION 7. TENANT'S MANAGEMENT AND OPERATING COVENANTS

7.1 Covenants.

Following Completion of the Initial Improvements, Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a first-class manner consistent with a quality office development located in the San Francisco Financial District, subject to the provisions of Sections 12 and 13 relating to damage and destruction and Condemnation. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Improvements except as otherwise set forth in the Port Sublease. In connection with managing and operating the Project, Tenant shall provide (or require others, including, without limitation, Subtenants of the Project, to provide), such services as may be necessary or appropriate for a quality office building development in the San Francisco Financial District, including, but not limited to, (a) repair and maintenance of the Improvements, as more fully described in Section 8, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping, and (e) security services for the Premises.

SECTION 8. REPAIR AND MAINTENANCE

8.1 Covenants to Repair and Maintain the Premises.

(a) Tenant's Duty to Maintain. Throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to Port except as otherwise set forth in the Port Sublease, the Premises (including, but not limited to, the Bulkhead and Substructure, pier, pier apron, the Public Access Area and all other Improvements), in condition and repair as is appropriate for a quality office building development in San Francisco's Financial District and in compliance with all applicable Laws and the requirements of this Lease. Tenant shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, except as otherwise provided in Sections 12 or 13. Tenant shall make such repairs with materials, apparatus and facilities as originally installed and approved by Port under the DA or this Lease, or, if not originally subject to Port approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the

materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Improvements.

(b) No Obligation of Port; Waiver of Rights. As between Port and Tenant, Tenant shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including any and all Improvements, from and after the Commencement Date. Except as otherwise provided in the Port Sublease, Port shall have no obligation to make repairs or replacements of any kind or maintain the Premises (including the Bulkhead and Substructure, pier, pier apron, the Public Access Areas, or any other Improvements) or any portion thereof. Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at Port's expense, or (except as provided in Sections 12 and 13) abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Port's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced or restated.

(c) Notice. Tenant shall deliver to Port, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority (other than Port) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Section 18, asserting that the requirements of such insurance policy or policies are not being met.

SECTION 9. IMPROVEMENTS

9.1 Tenant's Obligation to Construct the Initial Improvements.

Tenant shall construct the Initial Improvements in accordance with, and subject to all the terms, covenants, conditions and restrictions in, the DA. Port's issuance and recordation of a Certificate of Completion pursuant to the DA shall conclusively establish Tenant's satisfactory completion of such construction, except for the completion of any Deferred Items (as defined in the DA), which Tenant shall be obligated to complete under Section 1.4 of this Lease. Any Subsequent Construction shall be performed in accordance with Section 10.

9.2 Title to Improvements.

During the Term of this Lease, Tenant shall own all of the Improvements, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants other than Port), will vest in Port without further action of any Party, and without compensation

or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove trade fixtures and other personal property from the Premises.

SECTION 10. SUBSEQUENT CONSTRUCTION

10.1 Port's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Subsequent Construction in accordance with the provisions of this Section 10, provided that Tenant shall not, without Port's prior written approval (which approval may be withheld by Port in its sole discretion):

(i) Construct additional buildings or other additional structures, other than to replace or Restore those previously existing;

(ii) Increase the bulk or height of any Improvements beyond the bulk or height approved for the Initial Improvements;

(iii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law):

(iv) Perform Subsequent Construction that would be inconsistent with preserving the historic character of the Premises or adversely affect the certification of the Premises for the Historic Tax Credit;

(v) Materially increase the load of the Improvements on the Bulkhead or Substructure;

(vi) Perform Subsequent Construction to the Public Access Areas that would materially adversely affect (other than temporarily during the period of such Subsequent Construction) the public access to, or the use or appearance of such Public Access Areas:

(vii) Materially decrease the building area or the Rentable Area, within the Premises or otherwise adversely affect the rental income to be generated by the Premises:

(viii) Materially increase the Gross Building Area within the Premises:

(ix) Perform Subsequent Construction involving replacement or reconstruction that involves design, colors, or materials not originally approved by Port in accordance with the Construction Documents, unless materials originally installed are not reasonably available or do not meet current code requirements, and Tenant uses materials of

equal quality, durability and appearance to the materials originally installed, as determined by Port.

(b) Notice by Tenant. At least thirty (30) days before commencing any Subsequent Construction which in Tenant's good faith judgment requires Port's approval, Tenant shall notify Port of such planned Subsequent Construction. Such notice shall be accompanied by Final Construction Documents for such Subsequent Construction. Within twenty (20) days after receipt of such notice from Tenant, Port shall have the right to object to any such Subsequent Construction, to the extent that such Subsequent Construction requires Port's approval.

(c) Permits. Tenant acknowledges that the provisions of this section are subject to Sections 6.1(a) and 10.7(a)(ii). In particular, Tenant acknowledges that Port's approval of Subsequent Construction (or the fact that Tenant is not required to obtain Port's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the Port itself in its regulatory capacity.

10.2 Minor Alterations.

Unless otherwise required under Section 10.1(a)(i)-(viii), but notwithstanding Section 10.1(a)(ix), Port's approval hereunder shall not be required for (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative improvements which do not materially affect the structural integrity of the Improvements, (b) recarpeting, repainting the interior of the Premises, groundskeeping, or similar alterations, or (c) any other Subsequent Construction which does not require a building permit or BCDC permit (collectively, "Minor Alterations").

10.3 Tenant Improvements.

Except as otherwise required under the Port Sublease, Port's approval hereunder shall not be required for the installation of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from Port, acting in its regulatory capacity.

10.4 Construction Documents in Connection with Subsequent Construction.

(a) Preparation, Review and Approval of Construction Documents. With regard to any Subsequent Construction which requires Port's approval under this Section 10, Tenant shall prepare and submit to Port, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following Port's approval of such Schematic Drawings, Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings and Final Construction Documents are referred to as "Construction Documents"). Port may waive the submittal requirement of Schematic Drawings if it determines in its discretion that the scope of the Subsequent Construction does not

warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. Port shall approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Port deems the Construction Documents incomplete, Port shall notify Tenant of such fact within twenty-one (21) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If Port notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If Port disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of Section 10.5, Port shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in Port's previous notice of rejection, and Port shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If Port fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 10.4, such failure shall not constitute a default under this Lease on the part of Port, but such Construction Documents shall be deemed approved, provided that Tenant first provides Port with at least ten (10) days prior written notice that Tenant intends to deem said Construction Documents so approved.

(b) Progress Meetings: Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Port and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Port and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration.

10.5 Port Approval of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from Port, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses Port's written objections. Tenant shall resubmit such revised portions to Port as soon as possible after receipt of the notice of disapproval. Port shall approve or disapprove such revised portions in the same manner as provided in Section 10.4 for approval of Construction Documents (and any proposed changes therein) initially submitted to Port. If Tenant desires to make any substantial change in the Final Construction Documents after Port has approved them, then Tenant shall submit the proposed change to Port for its reasonable approval. Port shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to Port. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

10.6 Construction Schedule.

(a) Performance. Tenant shall prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.

(b) Reports and Information. During periods of construction, Tenant shall submit to Port written progress reports when and as reasonably requested by Port, but not more frequently than once every three (3) months, except that during the last three (3) months during any period of such construction, Port may request that such reports be submitted monthly.

10.7 Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by Port:

(i) Port shall have approved the Final Construction Documents (or those aspects of the Final Construction Documents as to which Port has an approval right under Section 10.1);

(ii) Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Section 6;

(iii) Tenant shall have submitted to Port in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction. If such good faith estimate exceeds One Million Dollars (\$1,000,000), Tenant shall also submit evidence reasonably satisfactory to Port of Tenant's ability to pay such costs as and when due.

(b) Construction Standards. All Subsequent Construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. In addition, in the case of Subsequent Construction which begins after the Improvements have opened for business to the general public, Tenant shall erect construction barricades substantially enclosing the area of such construction and maintain them until the Subsequent Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(c) Costs of Construction. Port shall have no responsibility for costs of any Subsequent Construction except as provided in the Port Sublease. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, Port and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Port to conduct such inspections or any liability in connection therewith.

(e) Prevailing Wages. Tenant agrees that any person performing labor in the construction of the Initial Improvements or other Improvements to the Premises shall be paid not less than the highest prevailing rate of wages and that Tenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant further agrees that, as to the construction of such improvements under this Lease, Tenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages. Tenant shall require any contractor to provide, and shall deliver to City every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements.

10.8 Safety Matters.

Tenant, while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work.

10.9 As-Built Plans and Specifications.

With respect to any Subsequent Construction costing Thirty Thousand Dollars (\$30,000) as Indexed, or more, for which Port's approval was required under Section 10, Tenant shall furnish to Port one set of as-built plans and specifications with respect to such Subsequent Construction within one hundred twenty (120) days following completion. If Tenant fails to provide such as-built plans and specifications to Port within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity.

SECTION 11. UTILITY SERVICES

11.1 Utility Services.

(a) Provision of Services. Port, in its proprietary capacity as owner of the Property and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises except as otherwise set forth in the Port Sublease. Tenant and its Subtenants (except for Port whose utility responsibilities are as set forth in the Port Sublease) shall be responsible for contracting with, and obtaining, all necessary utility and

other services, as may be necessary and appropriate to the uses to which the Premises are put (it being acknowledged that City (including its Public Utilities Commission) is the sole and exclusive provider to the Premises of certain public utility services. Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

(b) Antennae and Telecommunications Dishes. No antennae or telecommunications dish or other similar facilities may be installed on the Premises without the prior written approval of Port, which approval shall not be unreasonably withheld, conditioned or delayed. Any Wireless Telecommunications Systems shall be subject to Port's approval pursuant to the Port Commission's adopted policy on the siting and requirements for Wireless Telecommunications Systems. No such antennae shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of Port. Tenant agrees, at the request of Port or City, to permit Port or City to install, at City's or Port's sole cost, telecommunications or transmission equipment reasonably required for Port's or City's operations, including without limitation, facilities for City's emergency or 800 Mhz City wide radio system communications facilities (or its successor), at a location on top of the Improvements reasonably acceptable to Tenant.

11.2 Hetch-Hetchy Power.

Tenant shall purchase (i) all of its electricity for the Improvements from the City's utility provider, which presently is Hetchy-Hetchy Water and Power, or from Port, at then prevailing market rates for comparable types of load, so long as such electricity is reasonably available for Tenant's needs, and (ii) all other utility services for the Improvements from the City so long as City is in the business of providing such utility services, is able to timely make the required utility connections and hookups, and City charges then prevailing market rates for comparable services. Notwithstanding Section 27, Tenant's sole remedy for any failure of the City's utility to deliver such utility services as provided herein shall be to change providers if such failure continues for a period of more than thirty (30) days, or if Port is the contracting entity with the utility provider, Tenant may request Port to change providers and Port shall so as soon as reasonably practicable after Tenant's request.

SECTION 12. DAMAGE OR DESTRUCTION

12.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Section. For purposes hereof, "damage or destruction" shall not include a Release of Hazardous Materials at or affecting the Premises to the extent that such release is not covered by insurance carried (or required to be carried) by Tenant.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, which (i) could materially impair use or operation of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) exceeds in an individual instance the amount of Fifty Thousand Dollars (\$50,000) or aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000), Tenant shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to Port describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, Port and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

12.2 Rent after Damage or Destruction.

If there is any damage to or destruction of the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise specifically provided in Section 12.4. In the event of any damage or destruction to the Improvements that does not result in a termination of this Lease, the Rent payable hereunder will continue without abatement; provided however, that during the period required for Tenant to Restore the Improvements, Rent shall be payable from the proceeds of rental interruption or business interruption insurance required to be maintained by Tenant under Section 18.1(a)(vii) to the extent that such proceeds are attributable to Rent hereunder (or payable by Tenant in the amount of the proceeds which would have been payable but for Tenant's default in its obligations to maintain such insurance). To the extent that such insurance proceeds do not cover Rent hereunder, then the amount of Rent for which insurance proceeds are not available (or which would have been available but for Tenant's default in its obligations to maintain such insurance) will be temporarily abated proportionately with the degree to which Tenant's use of the Premises is impaired by the damage or destruction commencing from the date of the damage or destruction and continuing during the period required for Tenant to Restore the Improvements. Tenant shall pay or cause to be paid to Port, immediately upon receipt thereof, all proceeds of the rental interruption or business interruption insurance required to be carried by Tenant hereunder (or which would have been payable but for Tenant's default in its obligations to maintain such insurance) arising out of or in connection with the damage or destruction to the extent such proceeds are attributable to Rent

hereunder.

12.3 Tenant's Obligation to Restore.

If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 12.4, then Tenant shall, subject to Section 12.4 hereof, within a reasonable period of time, commence and diligently, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades), without regard to the amount or availability of insurance proceeds. All Restoration performed by Tenant shall be in accordance with the procedures set forth in Section 10 relating to Subsequent Construction and shall be at Tenant's sole expense.

12.4 Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction occurs during the last five (5) years of the Term, or if an event of Uninsured Casualty occurs at any time during the Term, then Tenant shall provide Port with a written notice (the "Casualty Notice") either (i) electing to commence and complete Restoration of the Improvements to the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Law (including any required code upgrades); or (ii) electing to terminate this Lease (subject to Section 12.4(b)). For purposes hereof, "Uninsured Casualty" will mean any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) exceeds Fifty Thousand Dollars (\$50,000.00), as Indexed, plus the amount of any applicable policy deductible, and which is not insured or insurable under the policies of insurance that Tenant is required to carry under Section 18 hereof; (2) an event of damage or destruction occurring at any time during the Term which is covered under Tenant's policies of earthquake or flood insurance but where the cost of Restoration (including the cost of any required code upgrades) will exceed the net proceeds of any insurance payable (or which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder) by at least Fifty Thousand Dollars (\$50,000.00), as Indexed, plus the amount of any applicable policy deductible. Tenant shall provide Port with the Casualty Notice no later than the earlier to occur of the date that is (x) thirty (30) days following receipt of an initial written demand from any Non-Affiliate Mortgagee or (y) ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. Except in the case of Uninsured Casualty, as a condition to making such election, Tenant shall pay or cause to be paid to Port, immediately upon receipt thereof, the proceeds of the rental interruption or business interruption insurance required hereunder arising out of or in connection with the casualty causing such Major Damage or Destruction to the extent attributable to the rent payable to Port under this Lease for the duration of such event of Major Damage or Destruction. If Tenant elects to Restore the Improvements, all of the provisions of Section 10 that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Construction.

(b) Conditions to Termination As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 12.4(a) above, Tenant shall do all of the following:

(i) In its Casualty Notice electing to terminate described in Section 12.4(a), Tenant shall state the cost of Restoration, and, in the case of earthquake or flood damage, the amount by which the cost of Restoration plus the amount of any applicable policy deductible exceeds insurance proceeds payable (or which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder) ; and

(ii) Tenant shall pay or cause to be paid the following amounts from casualty insurance proceeds the later of making the election to terminate or immediately upon receipt in the following order of priority:

(A) first, if Port determines it will Demolish the Improvements, then to Port for the costs of Demolition of the Improvements;

(B) second, to Port, which portion is an amount equal to all accrued and unpaid Rent owed by Tenant to Port under this Lease;

(C) third, to each Non-Affiliate Mortgagee demanding payment thereof in accordance with its Non-Affiliate Mortgage and applicable Law (in order of lien priority and not prorata), that portion of the remaining casualty insurance proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts secured by all Non-Affiliate Mortgages existing at the time of such payment, which sums shall be applied by each such Non-Affiliate Mortgagee to such indebtedness; and

(D) fourth to Port and Tenant, as their interests may appear, all remaining insurance proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction.

(iii) upon termination, Tenant shall deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and any remaining Improvements.

(c) Port's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease under circumstances permitted by Section 12.4(a) then Port may, by notice in writing given to Tenant within 60 days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises in their then-existing condition, free of any existing Subleases (unless otherwise assumed by Port) (ii) in the event of an Uninsured Casualty, continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades)

will exceed Fifty Thousand Dollars (\$50,000.00), as Indexed, plus the amount of any applicable policy deductible, or in the case of earthquake or flood, the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed the net proceeds of any earthquake or flood insurance payable (or which would have been payable but for Tenant's default in its obligation to maintain such insurance) by more than Fifty Thousand Dollars (\$50,000.00), as Indexed, plus the amount of any applicable policy deductible and require Tenant to Restore the Premises in accordance with Section 12.4(b); or (iii) continue the Lease in effect and undertake the Restoration of the Premises itself, provided that such Restoration is anticipated to be completed within 365 days after such event of damage or destruction, as determined by Port in its reasonable judgment.

12.5 Effect of Termination.

Provided that there shall not have occurred any Event of Default (or Unmatured Event of Default) under this Lease that has not been waived by Port, if Tenant elects to terminate the Lease under Section 12.4(a) above, and Port elects not to continue the Lease in effect as allowed under Section 12.4(c), then, on the date that Tenant shall have fully complied with all other provisions of Section 12.4(b) to the satisfaction of Port, this Lease shall terminate. Upon such termination, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination subject to payment to Port of accrued and unpaid Rent, up to the effective date of such termination to the extent not paid out of insurance proceeds; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. In addition, termination of this Lease under this Section 12 shall not limit the right of a Mortgagee to a New Lease under Section 38 unless such Mortgagee has agreed otherwise. At Port's request following any termination, Tenant shall deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Port.

12.6 Distribution Upon Lease Termination.

If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by Port, Tenant and, subject to Section 38, any Mortgagee or not yet collected, shall be paid to and retained by Port.

12.7 Event of Default.

If there shall have occurred an Event of Default (or Unmatured Event of Default) hereunder that has not been waived in writing by Port, Port shall receive all insurance proceeds to the extent that such amounts may be applied to the satisfaction of Tenant's obligations under this Lease.

12.8 Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all all-risk coverage insurance proceeds, earthquake and flood proceeds and boiler and machinery

insurance proceeds paid to Port or Tenant by reason of damage to or destruction of any Improvements, if any, must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Section 12.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Section 12, and if Tenant Restores the Improvements, any insurer paying compensation under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to (i) a trustee (which shall be a bank or trust company, designated by Port within twenty (20) days after written request by Tenant, having an office in San Francisco) or (ii) the Mortgagee that is the holder of any Mortgage which is a lien against the Improvements, at the option of such Mortgagee. However, such trustee or Mortgagee shall pay to Tenant, from time to time as the work of rebuilding, Restoration and repair shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such repairs, rebuilding and Restoration. The Trustee or Mortgagee, as the case may be, shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration or repair of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured. Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that no Event of Default (or Unmatured Event of Default) that has not been waived by Port shall exist on the date such damage is repaired, the Improvements shall have been Restored in accordance with the provisions of this Section 12 and all sums due under this Lease shall have then been paid in full, any excess of monies received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

12.9 No Release of Tenant's Obligations.

No damage to or destruction of the Premises or Improvements or any part thereof for fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, including any and all Additional Rent, except as otherwise expressly provided herein.

12.10 Arbitration of Disputes Relating to Estimated Costs of Restoration.

(a) Estimators. In the event Port and Tenant cannot mutually agree upon the cost of Restoration or the cost of replacing the Improvements under Sections 12.4(a), such disputed amount shall be determined in the manner provided in this Section 12.10. Either Party may invoke the provisions of this Section 12.10 at any time that a dispute as to any such amount exists, by delivering written notice to the other Party. Within twenty (20) business days after delivery of notice invoking the provisions of this Section, each Party shall designate, by written notice to the other Party, a licensed general contractor having at least ten (10) years experience in estimating construction costs of major construction projects in the City to estimate the cost or amount in dispute. Each such estimator shall be competent, licensed, qualified by

training and experience in the City; disinterested and independent. Each estimator (or if either Party fails to appoint its estimator within such twenty (20) business day period, the estimator appointed by the other Party) shall make an independent determination of the disputed amount in accordance with the provisions hereof. The estimators may share and have access to objective information in preparing their estimates, but they will otherwise act independently. Each estimator shall complete, sign and submit its written estimate of the disputed construction or replacement cost, as applicable, within fifteen (15) business days after the appointment of both estimators, unless the Parties agree to permit a longer period of time. If the higher estimate is not more than one hundred ten percent (110%) of the lower estimate, the disputed amount shall be determined for purposes of this Lease to equal the average of the two (2) estimates.

(b) Arbitration. If the higher estimate is more than one hundred ten percent (110%) of the lower estimate, the Parties shall agree upon and appoint an independent arbitrator within thirty (30) days after the first two (2) estimates have been submitted to the Parties. The arbitrator shall have the minimum qualifications required of an estimator pursuant to subsection (a) above, and shall also have experience acting as an arbitrator of disputes involving construction costs or construction disputes. If the Parties do not appoint such arbitrator within such thirty (30) day period, then either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an arbitrator meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. The arbitrator shall consider the estimates submitted by the Parties as well as any other relevant written evidence which the Parties may choose to submit. If a Party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other Party at the same time it submits the same to the arbitrator. Neither Party shall conduct ex parte communications with the arbitrator regarding the subject matter of the arbitration. Within fifteen (15) business days after his or her appointment, the arbitrator shall conduct a hearing, at which Port and Tenant may each make supplemental oral and/or written presentations, with an opportunity for testimony by the estimators and questioning by the Parties and the arbitrator. Within ten (10) business days following the hearing, the arbitrator shall select the estimate submitted by one or the other of the first two (2) estimators, as the more accurate estimate of the disputed amount, in the opinion of the arbitrator. The determination of the arbitrator shall be limited solely to the issue of deciding which of the estimates is closest to the actual disputed value or amount. The arbitrator shall have no right to propose a middle ground or to modify either of the two estimates, or to modify any provision of this Lease.

(c) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination by the estimators or the arbitrator, as applicable, shall be conclusive, final and binding on the Parties. Neither the estimators nor the arbitrator shall have any power to modify any of the provisions of this Lease. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to the estimators and the arbitrator. The estimators and the arbitrator will each report their respective determinations in writing, supported by the reasons for the determination.

(d) Conduct of Arbitration Proceeding. Any arbitration proceeding under this Section 12.10 shall be subject to California Code of Civil Procedure Sections 1280 to 1294.2 (but excluding Section 1283.05 with respect to discovery), or successor California laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in the City of San Francisco.

(e) Fees and Costs: Waiver. Each Party shall bear the fees, costs and expenses of the estimator it selects. The fees, costs and expenses of the arbitrator and the costs and expenses of the arbitration proceeding, if any, shall be shared equally by Port and Tenant. The Parties waive any claims against the estimator appointed by the other Party, and against the arbitrator, for negligence, malpractice, or similar claims in the performance of the estimates or arbitration contemplated by this Section.

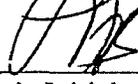
(f) ARBITRATION OF DISPUTES. With respect to the arbitration provided for in this Section 12.10, the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.



Port's Initials



Tenant's Initials

Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either Party to seek confirmation, correction or vacation of the arbitration award pursuant to California Code of Civil Procedure Section 1285 et seq.

SECTION 13. CONDEMNATION

13.1 General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Section 13.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

(c) Waiver. Except as otherwise provided in this Section 13, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Section 13, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

13.2 Total Condemnation.

If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "Total Condemnation"), this Lease shall terminate as of the Condemnation Date.

13.3 Substantial Condemnation, Partial Condemnation.

If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation of a portion of the Premises or Tenant's leasehold estate, this Lease shall terminate, at Tenant's option, as of the Condemnation Date, as further provided below. For purposes of this Section 13, a Condemnation of less than the entire Premises or of less than Tenant's leasehold estate shall be a Substantial Condemnation, and this Lease shall terminate, at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port) if Tenant reasonably determines that such Condemnation renders the Project untenable, unsuitable or economically infeasible for its intended use as a Class A office project; provided, however, a Condemnation described above shall not be substantial, and Tenant shall have no right to terminate this Lease under this Section, if the condition rendering the Project unsuitable, untenable, or economically infeasible for quality office use, as the case may be, can be cured by the performance of Restoration, and (i) the cost of

such Restoration does not exceed by at least Fifty Thousand Dollars (\$ 50,000.00 the portion of the Award fairly allocable to severance damages suffered by Tenant, or (ii) Port (in its sole and absolute discretion and without any obligation to do so) gives written notice to Tenant within thirty (30) days (subject to extension as provided below) after receipt of Tenant's termination notice that Port agrees, at its cost and expense, to pay any amount by which the cost of such Restoration exceeds by at least Fifty Thousand Dollars (\$50,000.00 the amount of the Tenant's severance damages. In either such case, this Lease shall not terminate, and Tenant shall perform such Restoration, subject to the provisions of Sections 10 and 13.4), within a reasonable time, subject to events of Force Majeure. In any such case, however, Minimum Rent shall be adjusted in accordance with the provisions of Section 13.3(b), and in addition, Minimum Rent shall be abated during the period necessary for the performance of such Restoration in an equitable amount to reflect the loss of use of the Premises during the period of such Restoration, as determined by the Parties, or in the absence of an agreement between the Parties, by court under Section 13.3(b). In addition, Port may extend the 30-day period for Port to deliver notice under clause (2) above, for up to ninety (90) additional days, by giving notice of such extension to Tenant within the original 30-day period following receipt of Tenant's termination notice, provided if Port extends such period, no Minimum Rent shall be payable under this Lease during the term of any such extension. Port's right to exercise the option described in clause (2) above shall be conditioned upon Port and Tenant reaching an agreement, with respect to the schedule for performance of required work, the timing of payments of Port's contribution to the costs of such work (to the extent not available from Port's share of the Award), and any other related issues which may be necessary or appropriate for resolution in connection with such work and the payment for such work. If no satisfactory agreement is reached within such period, Port shall have no right to exercise such right, and such Condemnation shall be deemed a Substantial Condemnation.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or Tenant's leasehold estate which does not result in a termination of this Lease under Section 13.2 or Section 13.3(a) (a "Partial Condemnation"), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, or in the case of a Substantial Condemnation which does not result in a termination of this Lease, the Minimum Rent for the remainder of the Premises shall be adjusted to reflect the diminution in value of the remaining portion of the Premises as of the Condemnation Date. Such Minimum Rent adjustment shall be separately computed with respect to (i) the temporary period during which any necessary Restoration will be performed; and (ii) the period following completion of any necessary Restoration. The Parties shall first negotiate in good faith in an attempt to determine by agreement the appropriate adjustment. If the Parties do not reach agreement within thirty (30) days following the Condemnation Date, the adjustment(s) shall be determined by the same court of law that establishes the Award. In the case of a Partial Condemnation, this Lease shall remain in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Condemnation, and Tenant shall promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration shall be performed in accordance with the provisions of Section 10.

13.4 Awards.

Except as provided in Section 13.1(a) and in Sections 13.5 and 13.6, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses (including, without limitation, reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("Net Awards and Payments") shall be allocated between Port and Tenant as follows:

- (a) first, to pay costs of Restoration incurred by Tenant;
- (b) second, Port and Tenant shall each be allocated the value of their respective interests in the Premises (to the extent Condemned), together with interest thereon from the Condemnation Date to the date of payment at the rate paid on the Award, and Attorneys' Fees and Costs, to the extent awarded. Port's severance damages, if any, shall reflect the adjustment of Minimum Rent as set forth in Section 13.3(b). The values of Port's and Tenant's respective interests in the Premises shall be established by the same court of law that establishes the amount of the Award. If less than all of the Premises is Condemned, and this Lease is terminated, the fair market value of the remaining Premises and Improvements thereon which become the property of Port upon such termination shall be treated for purposes of this Section as received by Port on account of its share of the Award and the cash payment payable to Port shall be reduced by a like amount and instead paid to Tenant;
- (c) third, to Port from the share otherwise allocated to Tenant, in an amount equal to any accrued and unpaid Rent owed by Tenant to Port under this Lease for periods prior to the Condemnation Date;
- (d) fourth, to Tenant from the share otherwise allocated to Port, in an amount equal to any accrued and unpaid Port Rent owed by Port to Tenant under the Port Sublease; and
- (e) fifth, to Tenant from the share otherwise allocated to Port, in an amount equal to any sum which Port has agreed to pay towards the cost of Restoration under clause (2) of Section 13.3(a).

13.5 Temporary Condemnation.

If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term of this Lease, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease shall remain in full force and effect, there shall be no abatement of Rent, and the entire Award shall be payable to Tenant.

SECTION 14. LIENS

14.1 Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, the Port Sublease, other permitted Subleases and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Section 5, (iii) Mortgages permitted under Section 38, (iv) Mortgages encumbering the subleasehold interests of Subtenants, provided no such Mortgage encumbers Tenant's leasehold estate unless such Mortgage is permitted under Section 38, and (v) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Section 5. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

14.2 Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of Port, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant shall take such action as may be required by Port or under any Law in existence or hereafter enacted which will prevent the enforcement of any mechanics' or similar liens against the Premises, Tenant's leasehold interest, or Port's fee interest in the Premises for or on account of labor, services or materials furnished to Tenant, or furnished at Tenant's request. Tenant shall provide such advance written notice of any Subsequent Construction such as shall allow Port from time to time to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Lease, and Port shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Port for such purpose and all reasonable expenses incurred by Port in connection therewith shall be payable to Port by Tenant within thirty (30) days following written demand by Port.

SECTION 15. SECURITY DEPOSIT

15.1 Waiver of Security Deposit.

For so long as Port remains a subtenant of the Premises under the Port Sublease, no security deposit will be required hereunder.

If the Port Sublease terminates prior to the termination hereof for any reason other than a default by Port, then within 30 days after the termination of the Port Sublease, Tenant

shall pay to Port, in addition to Rent, a Security Deposit (the "Security Deposit") in an initial amount equal to two month's Minimum Rent and two month's Participation Rent based on an average per month amount for the previous 12-month period. The Security Deposit shall be made in all cash, except as otherwise provided in Section 15.2. Tenant agrees that upon the occurrence of an Event of Default Port may, but shall not be required to, apply the Security Deposit in whole or in part to (a) remedy any failure by Tenant to pay Rent, including any and all Additional Rent, payable by Tenant hereunder, as and when due, (b) cure any default by Tenant in the performance of its repair and maintenance obligations or the faithful performance of any other terms, covenants and conditions of this Lease, or (c) repair any damage to the Premises caused by Tenant, its Subtenants (other than Port), Agents or Invitees. Should Port use any portion of the Security Deposit to cure any default by Tenant hereunder, Tenant shall replenish the Security Deposit to the original amount within ten (10) business days following Port's demand. Port's obligations with respect to the Security Deposit are solely that of debtor and not trustee. Port shall not be required to keep the Security Deposit separate from its general funds. Tenant shall not be entitled to any interest on the Security Deposit. The amount of the Security Deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease. Port may apply the Security Deposit as provided herein without waiving any of Port's other rights and remedies hereunder or at law or in equity. Upon the expiration or earlier termination of this Lease, Port shall return the unused balance of the Security Deposit to Tenant (less any amounts then due and payable from Tenant to Port under this Lease) within fourteen (14) days after Tenant surrenders possession of the Premises to Port. In addition, Port shall return the Security Deposit then held by Port if at the time Tenant delivers a letter of credit or other alternative security under Section 15.2. Upon the first anniversary date of the initial Security Deposit payment, and on each anniversary thereafter, the Security Deposit shall be adjusted to reflect two months' of the Minimum Rent then payable, and two months' of Participation Rent based on the Participation Rent payable for the immediately preceding 12 month period, and Tenant shall increase the Security Deposit to reflect such adjusted amount within 30 days after Port's written notice to Tenant of such adjustment.

15.2 Alternative Forms of Security.

In lieu of cash security as provided above, Tenant may deliver to Port an unconditional, irrevocable standby letter of credit in a form reasonably approved by the City Attorney and the Port's Executive Director. The letter of credit shall be issued by a bank with a Moody's rating of A or better (or comparable successor rating). The issuing bank must have a branch office in San Francisco at which demands on the letter of credit may be presented. The original term of the letter of credit shall be no less than one year. Tenant shall keep such letter of credit, at its expense, in full force and effect until the sixtieth (60th) day after the expiration of the Term or other termination of this Lease, to ensure the faithful performance by Tenant of all of the covenants, terms and conditions of this Lease. Such letter of credit shall provide thirty (30) days' prior written notice to Port of cancellation or material change thereof. In the event of any nonextension of the letter of credit, Tenant shall replace such security with a cash Security Deposit or another letter of credit permitted under this Section at least ten (10) days before expiration of such letter of credit. If Tenant fails to do so Port shall be entitled to present its written demand for payment of the entire face amount of such letter of credit and to hold the funds so obtained as the Security Deposit required under this Section. Any unused portion of the

funds so obtained by Port shall be returned to Tenant upon replacement of the letter of credit or deposit of cash security in the full amount required under this Section.

SECTION 16. ASSIGNMENT AND SUBLETTING

16.1 Assignment

(a) Consent of Port. Except as otherwise expressly permitted in Subsections 16.1(b) and (c) and except for the Port Sublease, Tenant, its successors and permitted assigns shall not assign any interest in this Lease either voluntarily or by operation of law, without the prior written consent of Port, which consent shall not be withheld or delayed unreasonably by Port after completion of the Initial Improvements but may be withheld by Port in its sole discretion prior to completion of the Initial Improvements.

(b) Mortgaging of Leasehold Notwithstanding anything herein to the contrary, at any time during the Term of this Lease after Completion of the Initial Improvements, Tenant shall have the right, without Port's consent, to sell, assign, encumber or transfer its interest in this Lease to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage, subject to the limitations, rights, and conditions set forth in Section 38 hereof.

(c) Conditions. Any transfer described in Subsection (a) is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof:

(i) any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Port, must expressly assume all of the obligations of Tenant under this Lease, the DA (if in effect), and the Sublease (if in effect) and any other agreements or documents entered into by and between Port and Tenant relating to the Project, and must agree to be subject to all of the conditions and restrictions to which Tenant is subject. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that Port would have had, had there been no such transfer or change;

(ii) all instruments and other legal documents involved in effecting the transfer shall have been submitted to Port for review, including the agreement of sale, transfer, or equivalent, and Port shall have approved such documents which approval shall not be unreasonably withheld or delayed;

(iii) Tenant shall have complied with the provisions of Subsection (e) of this Section 16.1;

(iv) there shall be no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease or any of the other documents or obligations to be assigned to the proposed transferee;

(v) the proposed transferee (A) has demonstrated to Port's reasonable satisfaction that it is capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned, (B) is not forbidden by applicable law from transacting business or entering into contracts with the Port; and (C) is subject to the jurisdiction of the courts of the State of California;

(vi) the proposed transfer is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by Port in its sole discretion (but expressly excluding the trading of shares on the open-market); and

(vii) Tenant deposits sufficient funds to reimburse Port for its legal expenses to review the proposed assignment.

(d) Delivery of Executed Assignment. No assignment of any interest in this Lease made with Port's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to Port, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the assignor's part to be performed under this Lease, the DA (if still in effect), the Port Sublease (if still in effect) and the other assigned documents to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit Port's rights or remedies under this Lease or under applicable Law). The form of such instrument of assignment shall be subject to Port's approval, which approval shall not be unreasonably withheld or delayed.

(e) No Release of Tenant's Liability or Waiver by Virtue of Consent. Upon occurrence of an assignment of Tenant's entire interest in this Lease, approved by Port under Section 16.1(a), (c) and (d) hereof, Tenant will be released from liability solely for obligations arising under this Lease on or after the date of such assignment. The consent by Port to an assignment hereunder is not in any way to be construed to relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Port to any further assignment or to any Significant Change.

(f) Notice of Significant Changes: Reports to Port. Tenant must promptly notify Port of any and all Significant Changes. At such time or times as Port may reasonably request, Tenant must furnish Port with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

(g) Determination of Whether Consent is Required. At any time Tenant may submit a request to Port for the approval of the terms of an assignment, transfer, sublease or encumbrance of this Lease (all of the foregoing being collectively referred to herein as a "proposed transfer") or for a decision by Port as to whether in its opinion a proposed transfer requires Port consent under the provisions of this Section 16. Within thirty (30) days of the making of such a request and the furnishing by Tenant to Port of all documents and instruments with respect thereto as shall be reasonably requested by Port, Port must notify Tenant in writing of Port's approval or disapproval of the proposed transfer or of Port's determination that the proposed transfer does not require Port's consent. If Port disapproves the proposed transfer, or determines that it requires the consent of Port, as applicable, it must specify the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(h) Scope of Prohibitions on Assignment/Significant Change. The prohibitions provided in this Section 16.1 will not be deemed to prevent (i) the granting of subleases so long as such subletting is done in accordance with Section 16.3, or (ii) the granting of any security interest expressly permitted by this Lease for financing development of the Improvements, subject to compliance with Section 38 and other applicable terms of this Lease. Further, notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Significant Change, subject to both of the following conditions: (i) at least thirty (30) days prior to such Significant Change, Tenant shall furnish Port with the name of the proposed assignee, together with evidence reasonably satisfactory to Port indicating that the proposed assignment constitutes a Significant Change; and (ii) the conditions set forth in Section 16.1(c)(i),(iii),(iv),(v),(vi) and (vii) have all been met to Port's reasonable satisfaction.

(i) Participation in Proceeds from Sale of Lease. Upon an assignment, sale, or other transfer of Tenant's entire interest in this Lease or upon the occurrence of a Significant Change, occurring at any time and from time to time during the Term, then Tenant shall pay to Port as Additional Rent hereunder, fifty percent (50%) of all sums paid or payable to Tenant by the transferee after subtracting expenses for verifiable, reasonable and customary brokerage commissions, value of Tenant's trade fixtures conveyed, other expenses actually paid or obligations incurred by Tenant in connection with the transfer paid or incurred by Tenant, and any unamortized cost of the Initial Improvements and Subsequent Construction based upon the actual construction costs thereof based on a straight-line amortization basis over the Term remaining at the time of sale.

(j) Assignment to Accommodate Sale of Historic Tax Credits. Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of an assignment to an entity solely for the purpose of taking advantage of the Historic Tax Credits, subject to all of the following conditions: (i) at least thirty (30) days prior to such assignment Tenant shall furnish Port with the name of the proposed assignee, together with evidence reasonably satisfactory to Port indicating that the proposed assignment is solely for the purpose of taking advantage of the Historic Tax Credits; (ii) the conditions set forth in Section 16.1(c)(i),(iii),(iv),(v),(vi) and (vii) have all been met to Port's reasonable satisfaction; and (iii) no release of Tenant pursuant to Section 16.1(e) shall occur.

16.2 Assignment of Rents.

Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any or present or future Subtenant; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Section 38 until such time as Port has terminated this Lease, at which time the rights of Port in all rents and other payments assigned pursuant to this Section 16.2 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, Port shall, upon the request of each Mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to such Mortgagee and to Port. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to Port the rents so collected (less the actual cost of collection) to the extent necessary to pay Port any Rent, including any and all Additional Rent, through the date of termination of this Lease. Such assignment shall be subject to the right of Tenant to collect such rents until the date of the happening of any Event of Default under the provisions of this Lease. Port shall apply any net amount collected by it from such Subtenants to the payment of Rent due under this Lease.

16.3 Subletting by Tenant.

(a) The Port Sublease. Concurrently herewith, Port shall enter into the Port Sublease with Tenant for the Port Sublease Premises in the form attached to the DA as Attachment 8. The term of the Port Sublease shall commence as provided therein.

(b) Other Subletting. Subject to the Port's Expansion Option set forth in the Port Sublease, and the Maritime Marketing Program set forth in Section 16.5 hereof, Tenant has the right to sublet all or any portion of the Improvements to one or more Subtenants by written subleases from time to time, subject to Port's written consent requested in accordance with Section 16.1(g) which shall not be denied except pursuant to subsection (ii) below. Notwithstanding the foregoing, if Tenant proposes a sublease that (1) is not pursuant to a bona fide arms-length transaction as reasonably determined by Port based upon information reasonably requested and obtained by Port under Section 16.1(g); or (2) is with an Affiliate of Tenant; or (3) is with a proposed subtenant having an existing landlord/tenant relationship with Tenant, then such sublease shall be subject to the Port's prior written consent, not to be unreasonably withheld, and further provided that it shall be reasonable for Port to withhold its consent in any such event if the Port reasonably determines the proposed sublease rental rate is substantially below market rental rates.

(i) Conditions of Consent. Port may consent to the proposed Sublease, subject to any reasonable conditions upon such Sublease, which conditions may include, without limitation: (A) that the proposed uses are consistent with this Lease, including without limitation, Section 3.6, (B) the Subtenant and the Sublease are expressly subject to all the terms and provisions of this Lease, (C) the term of the Sublease does not extend beyond the term of this Lease, (D) the term of the Sublease does not extend beyond a term of ten (10) years, including any options to extend, (E) that the proposed Subtenant indemnifies the City for any

loss or damage in form reasonably satisfactory to the City, (F) that Tenant remains liable under this Lease, (G) the proposed Subtenant provides liability and other insurance reasonably requested by Port, naming Port as an additional insured, in form and amounts reasonably approved by Port, and (H) that Port has not exercised its Expansion Option for such space as set forth in Article 4 of the Port Sublease.

(ii) Reasonable Grounds to Deny Consent. Except as otherwise provided in Section 16.3, Port may deny its consent to the proposed Sublease only if it determines, in its reasonable discretion, that (A) the use to which the Premises will be put by the proposed Subtenant is inconsistent with the terms of this Lease, including, without limitation, Section 3.6 regarding consistency with the Public Trust; (B) Tenant has failed to satisfactorily comply with the Maritime Marketing Program described in Section 16.5 as determined by Port in Port's reasonable judgment; or (C) the Sublease fails to meet the Port's reasonable conditions imposed pursuant to subsection (i) above. If Port denies its consent to the proposed Sublease pursuant to this subsection (ii), and if Tenant shall so request in writing, Port shall provide to Tenant a statement of the basis on which Port denied its consent.

16.4 Non-Disturbance of Subtenants, Attornment, Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, Port shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, Port will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between Port and such Subtenant ("Non-Disturbance Agreements"). All Non-Disturbance Agreements shall comply with the provisions of this Section 16.4(a) and of Section 16.4(b). Port shall provide a Non-Disturbance Agreement to a Subtenant if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the scheduled Term, unless Port approves such longer term; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of Section 42.1(a), (b) and (e) and Section 42.5; (iv) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attorn to Port (provided Port agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and the Sublease shall be deemed a direct lease or license agreement between the Subtenant and Port, except that Port shall not be liable to the Subtenant for any security deposit or prepaid rent or license fees previously paid by such Subtenant to Tenant, except for rent or license fees for the current month, if previously paid; (v) the form and material business terms of the Sublease are reasonably approved by Port, in light of market conditions existing at the time such Sublease is entered into, (vi) if Tenant is then in default of any of its obligations under this Lease, Port may condition its agreement to provide a Non-Disturbance Agreement on the cure of such defaults as Port may specify either in a notice of default given under Section 22.1 or in a notice conditionally approving Tenant's request for such Non-Disturbance Agreement (and if an Event of Default on the part of Tenant then exists, then Port may withhold or condition the giving of a Non-Disturbance Agreement), and (vii) the Subtenant shall have delivered to Port an executed estoppel certificate, in form and substance reasonably satisfactory to Port, certifying: (A) that the Sublease, including all amendments, is

attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in said certificate, and (D) such other matters as Port may reasonably request. Port shall not be required to enter into a Non-Disturbance Agreement with respect to any period beyond the scheduled expiration of the Term hereof. Port shall respond to any request for a Non-Disturbance Agreement within thirty (30) days after receipt of a true and complete copy of the relevant Sublease in the form to be executed, and all relevant information requested by Port. Such relevant information shall include reasonable financial information establishing the ability of the proposed Subtenant to perform its contemplated obligations under such Sublease, detailed information regarding proposed uses, and relevant information concerning the business character and reputation of the proposed Subtenant. Port agrees to cooperate, to the extent it is legally permitted to do so, in protecting the confidentiality of personal or financial information relating to any Subtenant. Nothing in this Section 16.4 shall preclude Port in its sole and absolute discretion from granting non-disturbance to other Subtenants.

(b) Form of Non-Disturbance Agreement. Each Non-Disturbance Agreement shall be substantially in the form of Exhibit F and, if not in such form, shall be in form and substance reasonably satisfactory to Port. With each request for a Non-Disturbance Agreement, Tenant shall submit a copy of the form, showing any requested interlineations or deletions, and Port shall approve or disapprove of the requested changes within twenty (20) days after receipt of such changes (such approval not to be unreasonably withheld or conditioned). Any disapproval by Port shall be in writing, and shall set forth the specific reasons for Port's disapproval. Failure by Port to approve or disapprove of specific interlineations, deletions or other modifications requested by a Subtenant within such twenty (20) day period shall be deemed to be approval of the requested changes (subject to Section 43.1).

16.5 Maritime Marketing Program.

Tenant acknowledges that the Premises are subject to the Public Trust, including the Burton Act Trust. As stated in the Recitals to this Lease, Port's primary objectives are for the historic renovation of Pier 1 as a nationally-registered historic structure to create a maritime-related office building, housing the Port's main office, and for public access. Tenant further acknowledges that Port has approved the use of a portion of the Premises for general office use by Tenant and others, based on the accessory nature of such use to the Port's primary Project objectives. However, in the event that office space becomes available in the Premises ("Available Sublease Space") that is not subleased to Port, Tenant, or any other subtenants under subleases in effect as of the Rent Commencement Date (collectively, the "Initial Subtenants"), Tenant shall first market the Available Sublease Space to Public Trust-consistent users before leasing it to other potential subtenants, all in accordance with the following:

(a) Marketing Plan. At least 180 days prior to subleasing any Available Sublease Space to a Party other than Port, Tenant, or Tenant's Affiliate, Tenant shall prepare and submit to Port a marketing plan (a "Marketing Plan") for the Port's review and comment. The Marketing Plan shall identify those marketing efforts, including listings in trade journals and

other forms of advertising, which Tenant intends to employ to facilitate the subleasing of the Available Sublease Space to trust-consistent users that are consistent with the uses permitted under this Lease ("Qualified Tenants"). Qualified Tenants may include, without limitation, international and maritime law firms, custom brokers, shippers, steamship and cruise lines, travel agents, trade advisory boards, banks with an international trade component, freight forwarders, transportation companies of all types, consulates, marine services, marine and transportation engineers or consultants, marine equipment leasing, maritime-related unions and organizations, other businesses engaged in intermodal cargo transportation, and professional services firms for which at least 50% of income is generated by Public Trust-consistent users. In designing and implementing the Marketing Plan, Tenant shall make reasonable efforts to provide information concerning the Premises and Improvements to a broad range of Qualified Tenants.

(b) Coordination with Port. Tenant shall consider and incorporate in good faith any comments received from Port with respect to a Marketing Plan, so long as such comments, if adopted, will not materially reduce the economic return to Tenant from the subleasing of the Improvements. Tenant agrees to make itself available, on reasonable advance notice, to meet with Port and discuss any Marketing Plan provided by Tenant in accordance with this Section, and implement such steps as the Port may recommend to increase usage of the Improvements for Public Trust-related uses.

(c) Priority to Qualified Tenants. In the case of multiple offers to lease a particular space in the Available Sublease Space, Tenant shall give priority to the subleasing of such space to a Qualified Tenant, so long as the rent and other terms of the sublease to be entered into with the Qualified Tenant are substantially equivalent to the rent and other terms which are then available from any non Public Trust-related user, and so long as Tenant, acting reasonably, has approved the identity and financial capabilities of the Qualified Tenant.

(d) Referrals by Port. Port, acting through its leasing personnel, may refer prospective Qualified Tenants to Tenant at any time, and Tenant in good faith will provide rental and other information to such Qualified Tenants concerning Available Sublease Space .

(e) Restrictions on Leasing to Non-Qualified Tenants. Without limiting the foregoing or anything else in this Section 16, if Tenant is unable to find a Qualified Tenant for the Available Sublease Space, Tenant may enter into new or renewal subleases of office space with a non-Qualified Tenant subject to Port's prior written consent under Section 16.3 hereof.

(f) Maritime Marketing for Initial Subtenants. Notwithstanding the foregoing, the Parties acknowledge that Tenant's obligations to prepare and comply with the Maritime Marketing program for Subtenants occupying the Premises at the Commencement Date are as set forth in the DA, and Port, by entering into this Lease, shall have deemed Tenant's compliance therewith to have been satisfied.

SECTION 17. INDEMNIFICATION OF PORT

17.1 Indemnification of Port.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or Port's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to or death of Persons or loss or damage to property occurring near or around the Premises which is caused directly or indirectly by Tenant or any of its Agents, Invitees, or Subtenants; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof; (iv) any use, possession, occupation, operation, maintenance, management or condition of property near or around the Premises by Tenant or any of its Agents, Invitees, or Subtenants; (v) any latent, design, construction or structural defect relating to the Initial Improvements and any subsequent Improvements constructed by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, or Subtenants; (vi) any failure on the part of Tenant or its Agents or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees or Subtenants; and (viii) any civil rights actions or other legal actions or suits initiated by any inhabitant of the Improvements. All references to Tenant's "Subtenants" above shall exclude Port as subtenant under the Port Sublease together with Port's Agents and Invitees unless such acts or omissions are caused by Tenant or any of its Agents or Invitees. It is the intent of this paragraph that Port shall be responsible for its own acts and omissions on the Sublease Premises in accordance with the Port Sublease. Notwithstanding the foregoing, however, Tenant shall not be required to Indemnify Port or any other Indemnified Parties against Losses to the extent, and only to the extent, proximately caused by (i) any negligence or other actionable misconduct of Port or any Other Indemnified Party, acting (or failing to act) in its governmental capacity, in the exercise of its police powers (as opposed to its proprietary capacity as an owner of land), and specifically excluding any activities or omissions arising out of Port's review or issuance of building permits for construction of the Initial Improvements under the DA or any Subsequent Construction under this Lease, (ii) the gross negligence or willful misconduct of Port or any Other Indemnified Party regardless of the capacity in which it acted or failed to act, or (iii) Losses arising from occurrences on the Port Sublease Premises, except to the extent caused by the gross negligence or willful misconduct of Tenant, its Agents, Invitees, or Subtenants (other than Port). If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

17.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 17.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter.

17.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under Section 17.1 or any other indemnification provision of this Lease.

17.4 Survival.

Tenant's obligations under this Section 17 and any other indemnity in this Lease shall survive the expiration or sooner termination of this Lease.

17.5 Other Obligations.

The agreements to Indemnify set forth in Section 17 and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise.

17.6 Defense.

Tenant shall, at its option but subject to the reasonable consent and approval of Port, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases Port shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, 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 shall have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to Port ten (10) business days after receipt by Tenant of an invoice therefor.

17.7 Release of Claims Against Port.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Premises for any cause arising at any time, including, without limitation, all

claims arising from the joint or concurrent negligence of Port or the other Indemnified Parties, but excluding any negligence or willful misconduct of the Indemnified Parties; provided however, the above shall not limit or alter the indemnification obligations of Port as subtenant as set forth in the Port Sublease.

SECTION 18. INSURANCE

18.1 Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to Port (except as otherwise provided in the Port Sublease), obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 18.1(a)), the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times prior to Completion of the Initial Improvements, and during any period of Subsequent Construction, Tenant shall maintain, on a form reasonably approved by Port, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, against hazards including earthquake (subject to the provisions of Section 18.1(b)(3)(A)), water damage (including, if appropriate and if available at commercially reasonable rates, groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 18.1(b)(4)(A)), including as named insureds Port, Tenant and Tenant's contractors and subcontractors with any deductible not to exceed Fifty Thousand Dollars (\$50,000)(except as to earthquake insurance and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 18.1(a)(i) and the insurance required under Section 18.1(a)(vii) may be required in order to comply with the requirements of Section 18.1(b)(3)(A) and Section 18.1(b)(4)(A).

(ii) Property Insurance: Earthquake and Flood Insurance. Upon Completion of the Initial Improvements, and upon completion of Subsequent Construction of any additional Improvements, Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss - Special Form"), including earthquake, subject to the provisions of Section 18.1(b)(iii)(B), and flood, subject to the provisions of Section 18.1(b)(iv)(B), in an amount not less than 100% of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, pilings, excavations and footings on that portion of the Premises) with any deductible not to exceed Fifty Thousand Dollars (\$50,000)(except as to earthquake insurance and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 18.1(a)(ii) and the insurance required under Section 18.1(a)(7) may be required in order to comply with the requirements of Section 18.1(b)(iii)(B)

and Section 18.1(b)(iv)(B). In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Port shall have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance shall not be subject to the provisions of Section 12.

(iii) Commercial General Liability Insurance. Tenant shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 10 93, insuring against claims for bodily injury (including death), property damages, personal injury and advertising liability occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto located on the Premises or any part of the Premises, such insurance to afford protection in an amount not less than Ten Million Dollars (\$10,000,000) each occurrence covering bodily injury and broad form property damage including contractual liability (which includes coverage of the indemnity in Section 17.1(i)), independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage. In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant shall maintain liquor liability coverage with limits not less than One Million Dollars (\$1,000,000.00), and Tenant shall require any Subtenant who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(iv) Workers' Compensation Insurance. During any period in which Tenant has employees as defined in the California Labor Code, Tenant shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than \$1,000,000 each accident (except that such insurance in excess of \$500,000 each accident may be covered by a so-called "umbrella" or "excess coverage" policy) covering all persons employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements. In addition, if any employees of Tenant are eligible for U.S. Longshore and Harbor Workers' Act benefits or Jones Act benefits, Tenant shall maintain coverage for such benefits, as applicable, with limits not less than One Million Dollars (\$1,000,000.00).

(v) Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment. Such insurance shall name as additional insured the following: THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS.

(vi) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than One Million Dollars (\$1,000,000) per occurrence.

(vii) Business Interruption Insurance. Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 18.1(a)(i), (ii) and (v) covering a period of not less than two (2) years during construction of the Initial Improvements, and covering a period of not less than one (1) year following Completion, with a limit of not less than Five Million Dollars (\$5,000,000) per year.

(viii) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities taking place prior to Completion of the Initial Improvements, Tenant shall maintain, or cause its contractor or consultant to maintain, environmental pollution or contamination liability insurance, on an occurrence form, with limits of not less than Five Million Dollars (\$5,000,000) each occurrence combined single liability for Bodily Injury and Property Damage or, with the prior written approval of Port (such approval not to be unreasonably withheld, conditioned or delayed), such coverage may be provided with a lower limit or on a claims made form.

(ix) Professional Liability. Tenant shall maintain or require to be maintained, professional liability (errors or omissions) insurance, with limits not less than Two Million Dollars (\$2,000,000.00) each claim and aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Tenant's activities under this Lease, with any deductible not to exceed Fifty Thousand Dollars (\$50,000.00) each claim.

(x) Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager and is customary for quality office buildings in the San Francisco Financial District.

(b) General Requirements. All 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 (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance shall name the Port as loss payee as its interest may appear, and as to both property and liability insurance shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) As to earthquake insurance only:

(A) during construction of the Initial Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at

commercially reasonable rates from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation), except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates;

(B) from and after Completion of the Initial Improvements, such insurance shall be in an amount at least equal to the lesser of (i) the amount available at commercially reasonable rates from recognized insurance carriers, or (ii) 100% of the maximum probable loss that would be sustained by the Premises as a result of the occurrence of an earthquake measuring 8.3 on the Richter scale, as determined not less frequently than every five (5) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Port, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate;

(iv) As to flood insurance only:

(A) during construction of the Initial Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at commercially reasonable rates from recognized insurance carriers (with a deductible up to, but not to exceed fifteen percent (15%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation) except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates;

(B) from and after Completion of the Improvements, such insurance shall be in an amount at least equal to the amount available at commercially reasonable rates from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make such flood insurance available at commercially reasonable rates.

(v) Shall be evaluated by Port and Tenant for adequacy not less frequently than every five (5) years from the anniversary date of Completion of the Initial Improvements. Following consultation with Tenant, Port may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice in San Francisco or in other cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. If the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, Port shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant shall promptly deliver to Port a certificate evidencing such new insurance amounts.

(vi) Shall provide that no cancellation, reduction in coverage, or termination of such insurance for any reason shall be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Port;

(vii) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

(viii) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 18.1(a)(i), (ii) and (y);

(ix) Shall be subject to the approval of Port, which approval shall be limited to whether or not such insurance meets the terms of this Lease; and

(x) If any of the insurance required hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease.

(xi) Shall for property insurance only, provide (if an endorsement to such effect is available at a commercially reasonable cost) that all losses payable under all such policies that are payable to Port shall be payable notwithstanding any act or negligence of Tenant.

(c) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant shall furnish Port certificates with respect to the policies required under this Section, together with copies of each such policy (if Port so requests) within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least ten (10) business days prior to the expiration date of each such policy. If at any time Tenant fails to maintain the insurance required pursuant to Section 18.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) business days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within ten (10) business days following demand, Tenant 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.

(d) Insurance of Others. If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies

include Tenant and Port as additional insureds, as their respective interests may appear.

18.2 Port Entitled to Participate.

With respect to property insurance, Port shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Five Million Dollars (\$5,000,000) covered by the insurance required to be carried hereunder; provided, however, that (i) Port's consent shall not be unreasonably withheld, and (ii) no consent of Port shall be required in connection with any such settlement, compromise or agreement concerning damage to all or any portion of the Improvements if Tenant shall have agreed in writing to commence and complete Restoration.

18.3 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 18.1(a)(i), (ii) or (v) to the extent that such loss is reimbursed by an insurer.

SECTION 19. HAZARDOUS MATERIALS

19.1 Hazardous Materials Compliance.

(a) Compliance with Hazardous Materials Laws. Tenant shall comply and cause (i) all Persons under any Sublease, (ii) all Invitees or other Persons entering upon the Premises, and (iii) the Premises and the Improvements, to comply with all Hazardous Materials Laws and prudent business practices, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, nor will it transport or permit the transport of Hazardous Materials to or from the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction of the Improvements, and which are reported to, and approved by Port prior to any such Handling and, in any case, are used in strict compliance with all applicable Laws, and (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general office purposes so long as such Handling is at all times in full compliance with all Environmental Laws.

(b) Notice. Except for Hazardous Materials permitted by Subsection 19.1(a) above, Tenant shall advise Port in writing promptly (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any

(A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform Port orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide Port with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Section 19) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications; provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including, without limitation, this Section 19).

(c) Port's Approval of Remediation. Except as required by law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to Port for Port's approval, which approval shall not be unreasonably withheld or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. Port shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If Port disapproves of any such Hazardous Materials Remediation plan, Port shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Hazardous Materials Laws, (y) to the reasonable satisfaction of Port, and (z) in accordance with the orders and directives of all federal, state and local governmental authorities, including, but not limited to, the RWQCB and the San Francisco Department of Public Health.

(d) Pesticide Prohibition. Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the Sheriff's Department an integrated pest management ("IPM") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with Port. In addition, Tenant shall comply with the requirements of Section 39.4(a) effective January 1, 2000, and with the requirements of Section 39.4(b) of the Pesticide Ordinance. Nothing herein shall prevent Tenant, acting through the Port, from seeking a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 39.8 thereof.

19.2 Hazardous Materials Indemnity.

Without limiting the indemnity in Section 17.1, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, any Subtenants or any other Person (other than Port and its Agents and Invitees) directly or indirectly arising out of (A) the Handling, transportation or Release of Hazardous Materials by Tenant, its Agents, Invitees or any Subtenants or any Person on or about the Premises (other than Port and its Agents and Invitees), (B) any failure by Tenant, its Agents, Invitees or Subtenants (other than Port and its Agents and Invitees) to comply with Hazardous Materials Laws, or (C) any failure by Tenant to comply with the obligations contained in Section 17.1. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to Port hereunder and shall be due and payable from time to time immediately upon Port's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

SECTION 20. DELAY DUE TO FORCE MAJEURE

20.1 Delay Due to Force Majeure.

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this Section 20.1 shall not apply to Tenant's obligation to pay Rent, including Additional Rent. A Party seeking an extension of time pursuant to the provisions of this Section 20.1 shall give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than thirty (30) days unless the other Party's rights are not prejudiced by such delinquent notice) after knowledge of the beginning of such enforced delay or (b) promptly after the other Party's demand for performance.

SECTION 21. PORT'S RIGHT TO PERFORM TENANT'S COVENANTS

21.1 Port May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by Port, Port may at its sole option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, Port first gives Tenant such notice and opportunity to take

corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Port constitutes a Condemnation or an impairment of Tenant's contract with Port. Tenant's indemnity obligations set forth under Section 17 shall not extend to any Losses arising out of the negligence or wilful misconduct of Port related to such entry hereunder.

21.2 Port May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Port (other than any Imposition, with respect to which the provisions of Section 4.2 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from Port for a period of thirty (30) days (or, if Section 18.1(c) is applicable, which failure continues for five (5) business days after written notice from Port), and is not the subject of a contest under Section 5, then, Port may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant; provided, however, that Port shall not pay any such sum or take any such action unless and until Port has provided Tenant with no less than fifteen (15) days' prior written notice after expiration of the above-referenced thirty (30) day notice (or five (5) days' prior written notice after expiration of the five day notice if Section 18.1(c) is applicable), indicating Port's intention to pay such sum or take such action. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Port that such failure is due to delay caused by Force Majeure, or is the subject of a contest under Section 5, is the subject of litigation or threatened litigation, or that cure of such failure cannot reasonably be completed within such period, then Port will not pay such sum or perform such obligation during the continuation of such contest or such Force Majeure delay or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure or the resolution of such event of Force Majeure.

21.3 Tenant's Obligation to Reimburse Port.

If pursuant to the provisions of Sections 18.1(c), 21.1, or 21.2, Port pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Port within ten (10) business days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Port in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of Port's demand until payment is made. Port's rights under this Section 21 shall be in addition to its rights under any other provision of this Lease (including, but not limited to, access to the Security Deposit required under Section 15 of this Lease) or under applicable Laws.

SECTION 22. EVENTS OF DEFAULT; TERMINATION

22.1 Events of Default.

Subject to the provisions of Section 22.2, the occurrence of any one or more of the following events shall constitute an "Event of Default" under the terms of this Lease:

- (a) Tenant fails to pay any Rent to Port when due, which failure continues for ten (10) days following written notice from Port (it being understood and agreed that the notice required to be given by Port under this Section 22.1(a) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such section) provided, however, Port shall not be required to give such notice on more than three occasions during any calendar year, and failure to pay any Rent thereafter when due shall be an immediate Event of Default without need for further notice;
- (b) An Event of Default (as defined in the DA) on the part of Developer, as Tenant, occurs under the DA (so long as it is in effect);
- (c) Tenant files a petition for relief, or an order for relief is entered against Tenant, 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 Tenant are not dismissed or stayed within one hundred twenty (120) days;
- (d) A writ of execution is levied on the leasehold estate which is not released 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 Tenant, which appointment is not dismissed within one hundred twenty (120) days;
- (e) Tenant makes a general assignment for the benefit of its creditors;
- (f) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Port;
- (g) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Port, or, if such cure cannot be reasonably completed within such five (5) business day period, if Tenant does not within such five (5) business 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; or
- (h) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation Measures) at the time such performance is due, and such violation or failure continues

without cure for more than thirty (30) days after written notice from Port specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (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.

(i) the Premises are abandoned or cease to be used for the uses permitted hereunder, which abandonment or cessation is not cured within fourteen (14) days after notice of belief of abandonment from Port provided, however, that no such fourteen (14) day cure period shall be applicable to any such abandonment or cessation from and after the first occurrence of any such abandonment or cessation; and further provided that the following shall not be deemed to be abandonment or cessation of use: (1) customary vacancies of subleased space at Premises for which Tenant is diligently pursuing marketing efforts; and (2) vacancies that are held to accommodate pre-committed options to lease or expansion options and where it is infeasible to lease such space to other third parties due to the short amount of time available prior to exercise of the option;

(j) Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises or Improvements in violation of this Lease;

(k) Tenant engages in or allows any use not permitted hereunder or breaches any operating covenant hereunder.

22.2 Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute an Event of Default under this Lease.

22.3 Special Provisions Concerning Port Sublease and Events of Default.

Notwithstanding anything in this Lease to the contrary, any event of default by Port under the Port Sublease that would otherwise cause an Event of Default hereunder will not be considered an Event of Default hereunder.

SECTION 23. REMEDIES

23.1 Port's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of Port following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by law or the terms of this Lease), Port shall have all rights and remedies provided in this Lease or available at law or equity; provided, however, notwithstanding anything to the contrary in this Lease, the remedies

of Port for any Event of Default by Tenant under the Prevailing Wage Provisions, or the First Source Hiring program shall be limited to the remedies provided in such programs. All of Port's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

23.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, Port may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, Port has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event Port elects this remedy, Port shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Port's rights, including the right to collect Rent, including any and all Additional Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of this Lease, Port may (i) enter the Premises and relet the Premises, or any part thereof, to third Persons for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements or any portion thereof. Tenant shall be liable immediately to Port for all costs Port incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Port in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease.

(b) No Termination without Notice. No act by Port allowed by this Section 23.2, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Port elects to relet the Premises as provided hereinabove in Section 23.2(a), the rent that Port receives from reletting shall be applied to the payment of:

(i) First, all costs incurred by Port in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Port in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs

of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to Port, in addition to or other than Rent due from Tenant;

(iii) Third, Rent, including any and all Additional Rent, due and unpaid under this Lease;

(iv) After deducting the payments referred to in this Section 23.2(c), any sum remaining from the rent Port receives from reletting shall be held by Port and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by Port. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Port incurred in reletting, remain after applying the rent received from the reletting as provided in Section 23.2(c)(i)-(iii), Tenant shall pay to Port, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(d) Payment of Rent. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the rent Port has received from any reletting which exceeds all costs and expenses of Port incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

23.3 Right to Terminate Lease.

(a) Damages. Port may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination, provided, however, in the case of an Event of Default under Sections 22.1(a), (b), or (h), Port may only exercise such remedy if such Event of Default involves a material breach that cannot be cured by the payment of money, or a grossly negligent, willful or fraudulent breach by Tenant of Tenant's covenants and obligations under this Lease or the DA, as applicable. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Port's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Port other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Port shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(ii) The worth at the time of the award of the amount by which

the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

(iv) Any other amount necessary to compensate Port for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom.

(v) "The worth at the time of the award", as used in Section 23.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 23.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event Port terminates Tenant's right to possession of the Premises pursuant to this Section 23.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding Section 16, Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without Port's written consent, which may be given or withheld in Port's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Section 38.

23.4 Continuation of Subleases and Other Agreements.

Port shall have the right, at its sole option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Port following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to Port such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Port the then existing Subleases and other agreements then in force, as above specified.

SECTION 24. PORT'S EQUITABLE RELIEF

24.1 Port's Equitable Relief.

In addition to the other remedies provided in this Lease, Port shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Port shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

SECTION 25. NO WAIVER

25.1 No Waiver by Port or Tenant.

No failure by Port or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Port or Tenant with respect to any other then existing or subsequent breach.

25.2 No Accord or Satisfaction.

No submission by Tenant or acceptance by Port of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Port's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Port had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Port. Port may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Port to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

SECTION 26. DEFAULT BY PORT; TENANT'S REMEDIES

26.1 Default by Port; Tenant's Exclusive Remedies.

Port shall be deemed to be in default hereunder only if Port shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more

than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, Port shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon the occurrence of default by Port described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all actual damages incurred by Tenant as a direct result of Port's default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, or (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Port or its Agents; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages proximately arising out of a default by Port hereunder) or Losses other than Tenant's actual damages as described in the foregoing clause (a), (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by Port hereunder, and (iii) Tenant shall have no remedy of self-help.

SECTION 27. NO RECOURSE AGAINST SPECIFIED PERSONS.

27.1 Tenant's Recourse Against Port

No commissioner, officer, director or employee of Port or City will be personally liable to Tenant, or any successor in interest, for any Event of Default by Port, and Tenant agrees that it will have no recourse with respect to any obligation of Port under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such individual.

27.2 Port's Recourse Against Tenant.

No member, officer, director, shareholder, agent or employee of Tenant will be personally liable to Port, or any successor in interest, for any Event of Default by Tenant, and Port agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due Port or any successor or for any obligation or claim based upon this Lease, against any such individual.

SECTION 28. LIMITATIONS ON PORT'S AND TENANT'S LIABILITY

28.1 Waiver of Consequential Damages.

As a material part of the consideration for this Lease, neither Port nor

Tenant shall be liable for, and each Party hereby waives any claim against the other for, any consequential damages arising out of any default by the other.

28.2 Limitation on Port's Liability Upon Transfer.

In the event of any transfer of Port's interest in and to the Premises, Port, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be 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 Lease 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; provided, however, that such subsequent transferor assumes the covenants and obligations of Port hereunder.

SECTION 29. ESTOPPEL CERTIFICATES BY TENANT

29.1 Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser or mortgagee of Port's interest in the Property), within fifteen (15) business days after a request, a certificate stating to the best of Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Port. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by Port, State Lands, and any prospective purchaser or mortgagee of the Premises or any part of Port's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into each Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to Port, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) above with respect to such Sublease.

SECTION 30. ESTOPPEL CERTIFICATES BY PORT

30.1 Estoppel Certificate by Port.

Port shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate stating to the best of Port's knowledge (a) that this Lease is unmodified and in full force and

effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of Port, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Port shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective transferee of Tenant's interest under this Lease.

SECTION 31. APPROVALS BY PORT

31.1 Approvals by Port.

The Port's Executive Director or his or her designee, is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Port hereunder, if the Executive Director determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Port's best interests. The Port Executive Director's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Port of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Port, the Executive Director, or his or her designee, shall be authorized to execute such instrument on behalf of Port, except as otherwise provided by applicable law, including the City's Charter.

31.2 Fees for Review.

Within thirty (30) days after Port's written request, Tenant shall pay Port, as Additional Rent, Port's costs, including, without limitation, attorneys' fees and costs (and including fees and costs of the City Attorney) incurred in connection with the review, investigation, processing, documentation and/or approval of any proposed assignment or Sublease, Mortgage, estoppel certificate, Non-disturbance Agreement or Subsequent Construction. Tenant shall pay such costs regardless of whether or not Port consents to such proposal, except only in any instance where Port has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

SECTION 32. NO MERGER OF TITLE

32.1 No Merger of Title.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest

in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

SECTION 33. QUIET ENJOYMENT

33.1 Quiet Enjoyment.

Subject to the Permitted Title Exceptions, the terms and conditions of this Lease and applicable Laws, Port agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Port. Notwithstanding the foregoing, Port shall have no liability to Tenant in the event any defect exists in the title of Port as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to Port's willful misconduct) and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

SECTION 34. SURRENDER OF PREMISES

34.1 End of Lease Term.

(a) Conditions of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to Port the Premises in good order and condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 34.1(c). Tenant hereby agrees to execute all documents as Port may deem necessary to evidence or confirm any such other termination.

(b) Subleases. Upon any termination of this Lease, Port shall have the right to terminate all Subleases hereunder except for those Subleases with respect to which Port has entered into Non-Disturbance Agreements as provided in Section 16.4, or which Port has agreed to assume pursuant to Section 23.4.

(c) Personal Property. Upon expiration or termination of this Lease, Tenant and all Subtenants shall have the right to remove their respective trade fixtures and other personal property. At Port's request, Tenant shall remove, at no cost to Port, any Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by Subtenants or other Persons). If the removal of such Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Port and in such a manner as is consistent with the national historic register status of the Premises.

SECTION 35. HOLD OVER

35.1 Hold Over.

Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of Port. In any such event, at Port's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant at the Minimum Rent in effect at the expiration of the Term Indexed from the date of hold-over.

SECTION 36. NOTICES

36.1 Notices.

All notices, demands, consents, and requests which may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is three days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Port:

Before Completion:

San Francisco Port Commission (Reference: Pier 1)
3100 Ferry Building
San Francisco, CA 94111
Attention: Executive Director
Facsimile: (415) 274-0412

with a copy to:

Port General Counsel (Reference: Pier 1)
3100 Ferry Building
San Francisco, CA 94111
Facsimile: (415) 274-049

After Completion:

San Francisco Port Commission (Reference: Pier 1)
Pier 1
San Francisco, CA 94111
Attention: Executive Director

with a copy to:

Port General Counsel (Reference: Pier 1)
Pier 1
San Francisco, CA 94111

To Tenant:

Before Completion:

AMB Property, L.P. (Reference Pier 1)
505 Montgomery Street
San Francisco, CA 94111
Facsimile: (415) 394-9001
Attn:

After Completion:

AMB Property, L.P. (Reference Pier 1)
Pier 1
San Francisco, CA 94111

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth above or such other number as may be provided from time to time by notice given in the manner required hereunder; however, neither Party may give official or binding notice by telefacsimile.

36.2 Form and Effect of Notice.

Every notice given to a Party or other Person under this Section must state (or shall be accompanied by a cover letter that states):

- (a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto; and
- (c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 36.2.

SECTION 37. INSPECTION OF PREMISES BY PORT

37.1 Entry.

Subject to the rights of Subtenants, including the Port under the Port Sublease,

Tenant shall permit Port and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Port may have a right to perform under Section 21, or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Port reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of the Premises. If Port elects to perform work on the Premises pursuant to Section 21, Port shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

37.2 Exhibit for Lease.

Subject to the rights of Subtenants, Tenant shall permit Port and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of Port's interest in the Premises, and (ii) during the last twenty-four (24) months of the Term, for the purpose of leasing the Premises.

37.3 Notice, Right to Accompany.

Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises except in an emergency. Such notice shall be not less than twenty-four (24) hours oral notice. Tenant shall have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises.

37.4 Rights of Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant (other than Port) to include a provision similar to this Section 37 in its Sublease) to require each Subtenant to permit Port to enter its premises for the purposes specified in this Section 37.

SECTION 38. MORTGAGES

38.1 No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Section 38, Tenant shall not:

(i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 14.1.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the Land in connection with any financing permitted hereunder, or otherwise. Port shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Section 38 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

38.2. Leasehold Liens

(a) Tenant's Right to Mortgage Leasehold. At any time and from time to time during the Term after Completion, Tenant shall have the right to assign, mortgage, or encumber Tenant's leasehold estate created by this Lease by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent permitted hereby; provided, however, notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent to the extent provided in this Lease, and for the performance of all other obligations contained in this Lease.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than one (1) Mortgagee at any one time.

38.3. Notice of Liens

Tenant shall notify Port promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

38.4. Purpose of Mortgage

(a) Purpose. A Mortgage shall be made only for the purposes of financing the Initial Improvements and any subsequent repairs, alterations, or improvements to the Initial Improvements. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would directly or indirectly be, or be perceived to be in Port's reasonable judgment, an obligation or security of Port.

(b) Statement. Port agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a leasehold mortgage, deed of trust, or other security instrument a statement in recordable form as to whether such mortgage, deed of trust, or other security instrument is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Port from asserting that such mortgage, deed of trust, or other security instrument (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Port. In making a request for such statement, Tenant shall furnish Port true, accurate and complete copies of such of the financing documents as are required reasonably by Port to permit Port to make the determination whether such security instrument is permitted hereby. In no event, however, shall any failure by Tenant or other Party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

38.5. Interest Covered by Mortgage

A Mortgage may attach to any of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon (other than the Port Sublease unless Port has first entered into a non-disturbance agreement or equivalent protective agreement with the applicable mortgagee on reasonable and customary terms), (iii) any Personal Property of Tenant, (iv) products and proceeds of the foregoing, and (v) any other property rights and interests of Tenant arising under this Lease. As provided in Section 38.1(b) no Mortgage may encumber Port's interest in or under this Lease or Port's fee simple interest in the Property or Port's personal and other property in, on or around the Property.

38.6. Institutional Lender; Other Permitted Mortgagees

A Mortgage may be given only to (i) a Bona Fide Institutional Lender, or (ii) any other lender which shall have been approved by Port in its sole and absolute discretion. In any instances in which Port's consent is so required, Port shall be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within thirty (30) days after the receipt of such written notice constitutes approval, and Port sends no notification of disapproval within such period.

38.7. Rights Subject to Lease

(a) Subject to Lease. All rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, the DA, the Port Sublease, and to all rights of Port hereunder. None of such covenants, conditions and restrictions is or shall be waived by Port by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Port in writing.

(b) Construction and Restoration Obligations. Notwithstanding any provision of this Lease to the contrary, including, but not limited to, those representing covenants running with the land, no Mortgagee, including any such Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof but excluding (i) any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or (ii) any other purchaser at foreclosure sale (other than the Mortgagee itself), shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements, subject to Section 38.10(c); provided, however, (i) that nothing in this Section or any other Section or provisions of this Lease shall be deemed or construed to permit or authorize any such holder to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized in the DA, as hereafter amended or extended from time to time, and (ii) in the event that Mortgagee obtains title to the leasehold and chooses not to complete or Restore the Improvements, it shall so notify Port in writing of its election within forty-five (45) days following its acquisition of the tenancy interest in this Lease and shall sell its tenancy interest with reasonable diligence to a purchaser that shall be obligated to Restore the Improvements, but in any event Mortgagee shall use good faith efforts to cause such sale to occur within six (6) months following the Mortgagee's written notice to Port of its election not to Restore. If Mortgagee fails to sell its tenancy interest using good faith efforts within such six (6) month period, it shall not constitute a default hereunder, but the Mortgagee shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements, subject to Section 38.10(c). If Mortgagee agrees to Restore the Improvements, or fails to sell its tenancy interest within six (6) months and is required to Restore then all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligations.

38.8. Required Provisions of any Mortgage

Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to Port of the occurrence of any event of default under the Mortgage; (b) that Port shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

38.9. Notices to Mortgagee

(a) Copies of Notices. Port shall give a copy of each notice Port gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of Port's consent to an assignment of any interest in this Lease or to a Significant Change, to any Mortgagee that has given to Port written notice substantially in the form provided in Subsection (b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by Port, addressed to such Mortgagee at the address last furnished to Port. Port shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Port. Port's failure to give such notice to a Mortgagee shall not be deemed to constitute a default by Port under this Lease, but no such notice by Port shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 36.

(b) Notice From Mortgagee to Port. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Port under this Lease in accordance with Subsection (a) above provided such Mortgagee shall have delivered a notice to Port in substantially the following form:

"The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, acting through the San Francisco Port Commission, as landlord, and AMB Property, L.P., as Tenant (the "Lease"), of Tenant's interest in the Lease demising the parcels, 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 Lease to Tenant by Port be sent to the undersigned at the following address: _____."

38.10. Mortgagee's Right to Cure

If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. In the case of any notice of default given by Port to Tenant and Mortgagee in accordance with Section 38.10, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (i) the expiration of such cure period, or (ii) the date that Port has served such notice of default upon Mortgagee, and Port shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Tenant; provided, however, if such default cannot reasonably be cured or remedied within such additional thirty (30) day period, such cure period shall be extended (and no Event of Default shall be deemed to have occurred under this Lease by reason of such default) so long as the Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure.

(b) Foreclosure. Anything contained in this Lease to the contrary

notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, Port shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) notified Port of its intention to institute foreclosure proceedings or otherwise acquire Tenant's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch (subject to Force Majeure). A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee. The foregoing provisions of this Subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after the defaults or Events of Default hereunder referred to shall have been cured; (ii) nothing herein contained shall preclude Port, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) such Mortgagee shall agree with Port in writing to comply during the period Port forbears from terminating this Lease with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee, including but not limited to the payment of all sums due and owing hereunder and the use restrictions set forth in Section 3.1 but excluding the operating covenants in Section 7.1. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence, Mortgagee shall have the right at any time to notify Port that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Port, and, thereupon, Port shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease. Upon any such termination, the provisions of this Section 38.11(d) shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are susceptible of being performed by Mortgagee.

(c) Construction.

(i) Subject to Section 38.8(b), if a default of Tenant occurs following any damage or destruction but prior to Restoration of the Improvements, Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Mortgagee expressly assumes Tenant's obligations to Port by written agreement reasonably satisfactory to Port, to Restore, in the manner provided in

this Lease, the Improvements on the Premises or the part thereof to which the lien or title of such Mortgagee relates, and submitted evidence satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant's obligations to Restore in accordance with Subsection (c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date of Tenant stopped work on the Restoration to the date of such assumption plus an additional ninety (90) days.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, except (i) by Condemnation, or (ii) subject to Section 12.5; as the result of damage or destruction as provided in Section 12, Port shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. The Mortgagee shall thereupon have the option to obtain a new Lease in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, Port shall enter into a new lease of the Premises with the most senior Mortgagee giving notice within such period or its designee, provided that the Mortgagee assumes Tenant's obligations as Sublandlord under the Port Sublease and any other Subleases then in effect; and

(ii) Such new Lease shall be entered into at the reasonable cost of the Mortgagee thereunder, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease. The Parties intend that such new lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. Such new Lease shall require the Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease and any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of the Initial Improvements, which obligations shall be performed by Mortgagee in accordance with Section 38.11(c). Upon the execution of such new Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable Attorneys' Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new Lease.

(e) Nominee. Any rights of a Mortgagee under this Section 38.11, as amended hereby, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee; provided, however, no Mortgagee shall acquire title to the Lease through a nominee or designee which is not a Person otherwise permitted to become

Tenant hereunder; provided, further that a Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any new Lease executed pursuant to Subsection 38.11(d), any sublease then in effect shall be assigned and transferred without recourse by Port to Mortgagee and all monies on deposit with Port which Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by Mortgagee for the purposes of and in accordance with the provisions of such new Lease. Between the date of termination of this Lease and commencement of the term of the new Lease, Port shall not (1) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a new Lease, (2) cancel or materially modify any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor, or (3) accept any cancellation, termination or surrender thereof without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the new Lease, Port shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property.

(g) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of the Mortgages which are permitted hereunder.

(h) Consent of Mortgagee. No modification, termination or cancellation of this Lease other than adjustments to Minimum Rent under Section 2.3(c) hereof that may be adverse to a Mortgagee shall be effective as against a Mortgagee unless a copy of the proposed change shall have been delivered to such Mortgagee and such Mortgagee shall have either (i) approved the change in writing or (ii) failed reasonably to disapprove the change in writing within ten (10) days after delivery of a copy thereof.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby.

(j) Limitation on Obligation to Cure. Anything herein contained to the contrary notwithstanding, a Mortgagee, and its designee or nominee (other than Tenant), shall have no obligation to cure (i) any Event of Default by Tenant under this Lease occurring pursuant to Section 22.1 (c), (d), (e), (f), (h) or (i) (but with respect to Section 22.1(h), only if such covenant or obligation is not susceptible to being cured without possession of the Premises or is otherwise not reasonably susceptible of being cured), or (ii) any other Event of Default by Tenant under this Lease which is not reasonably susceptible of being cured; provided, however, such provisions of this Lease shall apply to and remain effective on a prospective basis notwithstanding Mortgagee's inability to cure such previous Events of Default. All of the defaults listed in clause (i) hereof shall be deemed defaults not "reasonably susceptible of being complied with" or "not reasonably susceptible of being cured" for purposes of Sections 38.10(b) and (c).

38.11. Assignment by Mortgagee

Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Port or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Port shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. Such Mortgagee's or transferee's right thereafter to assign or transfer this Lease or such new Lease shall be subject to the restrictions of Section 16. In the event Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to Section 38.11(d), and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Section 38 and any other provisions of this Lease intended for the benefit of the holder of a Mortgage.

38.12 Transfer of Mortgage.

Port hereby consents to a transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such transfer the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

38.13 Appointment of Receiver.

In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage.

SECTION 39. NO JOINT VENTURE

39.1 No Joint Venture

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Port and Tenant or between Port and any other Person, or cause Port to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

SECTION 40. FIRST SOURCE HIRING PROGRAM

40.1 First Source Hiring Ordinance.

Tenant shall comply with the First Source Hiring Agreement attached hereto as Exhibit G with respect to the operation and leasing of the Premises, and shall include such applicable provisions in its Subleases in accordance with the First Source Hiring Agreement.

SECTION 41. REPRESENTATIONS AND WARRANTIES

41.1 Representations and Warranties of Tenant.

Tenant represents, warrants and covenants to Port as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a Delaware limited partnership duly organized and validly existing under the laws of the State of Delaware. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of Delaware and the State of California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Port in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Port and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a Party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant

or its business, or (D) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, and (iii) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

SECTION 42. SPECIAL PROVISIONS

42.1 Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant 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) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Lease elsewhere within the United States, 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, as well as any benefits other than the benefits specified above, 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(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by Parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

42.2 [Intentionally deleted]

42.3 MacBride Principles - Northern Ireland.

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

42.4 Tropical Hardwood/Virgin Redwood Ban.

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product. Except as permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, Tenant shall not use any tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood product in the construction of the Initial Improvements or any other Improvements on the Premises.

42.5 Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Premises. The foregoing prohibition shall include 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 or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of

cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

42.6 Burma (Myanmar) Business Prohibition.

Tenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(g) of the San Francisco Administrative Code. The City reserves the right to terminate this Lease for default if Tenant violates the terms of this clause. Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein, and the failure of Tenant to comply with any applicable requirements thereof shall be deemed a material breach of this Lease. In the event Tenant fails to comply in good faith with any of the applicable provisions of Chapter 12J of the San Francisco Administrative Code, Tenant shall be liable for liquidated damages for each violation in an amount equal to Tenant's net profit under this Lease, or 10% of the total amount of the Lease, or \$1,000, whichever is greatest. Tenant acknowledges and agrees the liquidated damages assessed shall be payable to Port upon demand and may be set off against any moneys due to Tenant from Port under this Lease.

42.7 Proximity of Mid-Embarcadero Projects.

Tenant acknowledges that during the Term, the Waterfront Transportation Project involving (by way of example only and not of limitation) the realignment of the Embarcadero Roadway, Mid-Embarcadero freeway replacement, construction of a MUNI-metro turnaround project, MUNI-metro extension, F-line historic streetcar line, and a waterfront promenade, is scheduled to be constructed on property in the immediate vicinity of the Premises. In addition, the Port is undertaking the Ferry Terminal project, the renovation of the Ferry Building and improvements to Pier 1 ½. Hornblower Yachts, Inc. or another tenant may also undertake improvements to Piers ½ and 3 pursuant to leases with the Port. Tenant is aware that the construction of such projects and the activities associated with such construction will generate certain adverse impacts that may result in some inconvenience to or disturbance of Tenant. Such impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all claims against the Indemnified Parties arising out of such inconvenience or disturbance, including without limitation any abatement or reduction of Rent.

42.8 Waiver of Relocation Assistance Rights.

If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 35.1, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 13 relating to Condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

SECTION 43. GENERAL

43.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of Section 20 relating to Force Majeure.

43.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall 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 shall 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. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof.

43.3 Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of Port, Tenant and any Mortgagee. Where the term "Tenant," "Port" or "Mortgagee" is used in this Lease, it means and includes their respective successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or a comparable public body which has succeeded to Port's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Port for purposes of this Lease.

43.4 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Section 38 with regard to Mortgagees.

43.5 Real Estate Commissions.

Port is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and Port each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

43.6 Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

43.7 Entire Agreement.

This Lease (including the Exhibits), the DA, for so long as such agreement is in effect, and the Port Sublease, constitute the entire agreement between the Parties with respect to the subject matter set forth therein and supersede all negotiations or previous agreements

between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Lease.

43.8 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties. No termination, amendment or modification which requires the prior approval of a Mortgagee shall become effective without the prior approval of such Mortgagee, pursuant to Section 38.14.

43.9 Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Port's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of Port, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

43.10 Recordation.

This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as Exhibit H. Promptly upon Port's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Port and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Port may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

43.11 Extensions by Port.

Upon the request of Tenant, Port may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

43.12 Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease.

43.13 Attorneys' Fees.

Except as provided in Section 12.10 with regard to an arbitration proceeding, if either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of 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 City Attorney's Office.

43.14 Effective Date.

This Lease shall become effective on the date (the "Effective Date") the Parties duly execute and deliver this Lease upon Close of Escrow under the DA following approval by the City's Port Commission, Board of Supervisors and Mayor in their respective sole and absolute discretion. The Effective Date will be inserted by Port on the cover page and on page 1 hereof, provided, however, that Port's failure to insert the Effective Date shall not invalidate this Lease. Where used in this Lease or in any of its exhibits, references to "the date of this Lease," the "reference date of this Lease," "Lease Date" or "Effective Date" will mean the Effective Date determined as set forth above and shown on the first page hereof.

43.15 Severability.

If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

SECTION 44. DEFINITION OF CERTAIN TERMS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

Additional Rent means any and all sums (other than Minimum Rent and Participation Rent) that may become due or be payable by Tenant under this Lease.

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

Agents means, when used with reference to either Party to this Lease, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

Attorneys' Fees and Costs means reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Available Sublease Space as defined in Section 16.5.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

BCDC means the Bay Conservation and Development Commission, a State agency established under the McAteer Petris Act.

Bona Fide Institutional Lender means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lenders: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or eleemosynary institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time of a Mortgage is recorded in favor of such Person or Persons, has (or is Specially Controlled by a Person having) assets of at least \$500 million in the aggregate (or the equivalent in foreign currency), and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, or (ii) any special account, managed fund, department, agency or Special Affiliate of any of the foregoing, or (iii) any person acting in a fiduciary capacity for any of the foregoing. For purposes hereof, (1) acting in a "fiduciary capacity" shall be deemed to

include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document, (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if promptly after such loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more persons then qualifying as a Bona Fide Institutional Lender, and (3) "Special Affiliate" means any Person directly or indirectly Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the person in question.

Bulkhead means the Pier 1 bulkhead, bulkhead wall, marginal wharf and seawall, all as located within the Premises

Burton Act means the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, providing for the transfer to City from State, subject to specified terms, conditions and reservations, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

Burton Act Agreement means that certain Agreement Relating to Transfer of Port of San Francisco from the State of California to the City and County of San Francisco, dated January 24, 1969, entered into between City and State under the authority granted under the Burton Act.

Burton Act Trust means that statutory trust imposed by the Burton Act.

Certificate of Completion as defined in Section 7.01 of the DA, and as described below in the definition of "Completion".

Certified Construction Costs as defined in Section 6.23(b) of the DA.

City means the City and County of San Francisco, a municipal corporation. City shall refer to the City operating by and through its Port Commission, where appropriate. All references to City shall include the Port.

Commencement Date as defined in Section 1.2.

Completion or Complete or Completed means completion of construction of all or any applicable portion of the Improvements in accordance with the terms of the DA. The fact of Completion shall be conclusively evidenced by the issuance of a Certificate of Completion pursuant to the DA (provided that Deferred Items shall be completed in accordance with the provisions of this Lease).

Condemnation means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of

condemnation or such sale occurs by way of settlement of a condemnation action.

Condemnation Date means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

Construction Documents as defined in Section 10.4.

Control means the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person or the power to control the affairs and key decisions of such Party, and Controlled and Controlling have correlative meanings. Common Control means that two Persons are both Controlled by the same other Person.

DA as defined in Recital H.

Default Rate as defined in Section 2.8.

Demolition means to raze the Improvements (or relevant portion of the Improvements), remove any rubble or debris resulting therefrom, and cause the Property to be returned to a safe condition (and "Demolish" and "Demolished" shall have correlative meanings).

Disabled Access Laws means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 et seq. and disabled access laws under the Port's building code.

Effective Date as defined in Section 43.14.

Excess Rental Income as defined in Section 2.5(b)(ii).

Event of Default as defined in Section 22.1.

Executive Director means the Executive Director of the Port or his or her designee.

Final Construction Documents means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

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, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, delays of subcontractors and unusually severe weather and, in the case of Tenant, any delay resulting from a defect in Port's title to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. 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 repairs, to Restore if appropriate, and to complete performance of the hindered act.

Gross Building Area means the total floor areas of the buildings on the Premises, excluding unenclosed areas, measured from the exterior of the walls.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material ("Handling" will have a correlative meaning).

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 *et seq.*) or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Environmental Laws, together with any and all Losses made or threatened by any third party against City, including the Port, , their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws include, but are not limited to, the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), to the extent applicable to tenants of City property on the effective date of the DA, and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous

Waste”).

Historic Tax Credits as defined in Section 2.3(b).

Historic Tax Credits Investment Proceeds as defined in Section 2.3(b).

Impositions as defined in Section 4.1(b).

Improvements means all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Property on or after the Commencement Date, including, but not limited to, the Initial Improvements, together with the Bulkhead and Substructure.

Indemnified Parties means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Port; all of the Agents of the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect and hold harmless.

Index means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is modified during the Term hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, Port shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the Index from the first day of the month in which the Commencement Date occurred to the first day of the most recent month for which the Index is available at any given time.

Initial Improvements means all Improvements to be built on the Premises or portion(s) thereof under the DA, including, without limitation, all renovation and rehabilitation work on the existing pier, pier shed, Bulkhead and Substructure.

Interim Escalation as defined in Section 2.5(a)(iv).

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 Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any

Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants (other than Port) of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants (other than Port).

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

Lease means this Lease, as it may be amended from time to time.

leasehold estate means Tenant's leasehold estate created by this Lease.

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Major Damage or Destruction means damage to or destruction of all or any portion of the Initial Improvements (together with any Subsequent Improvements) on the Premises to the extent that the hard costs of Restoration will exceed seventy five percent (75%) of the hard costs to replace such Improvements on the Premises in their entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

Memorandum of Lease means the Memorandum of this Lease, between Port and Tenant, recorded in the Official Records.

Minimum Rent as defined in Section 2.2.

Mortgage means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.

Mortgagee means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

Net Awards and Payments as defined in Section 13.4.

Non-Affiliate Mortgage means a Mortgage that is held by a Non-Affiliate Mortgagee.

Non-Affiliate Mortgagee means the holder of a Mortgage, which holder (A) is not an Affiliate of Tenant, or (B) is a Bona Fide Institutional Lender.

Non-Disturbance Agreements as defined in Section 16.4(a).

Official Records means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the City and County of San Francisco.

Partial Condemnation as defined in Section 13.3.

Participation Rent as defined in Section 2.2

Participation Rent Statement as defined in Section 2.5(c).

Party means Port or Tenant, as a Party to this Lease; Parties means both Port and Tenant, as Parties to this Lease.

Permitted Title Exceptions as defined in Section 1.1(b).

Permitted Uses as defined in Section 3.1.

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.

Personal Property means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

Port means the City and County of San Francisco, acting by and through the San

Francisco Port Commission.

Port Rent as defined in Section 2.2.

Port Sublease means the sublease between Tenant, as sublandlord, and Port, as subtenant, for the Port Sublease Premises, substantially in the form attached to the DA as Attachment 8.

Port Sublease Premises as defined in Section 1.5

Premises as defined in Section 1.1.

Project means the renovation, rehabilitation and redevelopment of the Pier 1 pier, Bulkhead, Substructure, pier shed, construction of additional public access, tenant improvements, and other related Improvements.

Projected Total Rental Income

Property as defined in Section 1.1.

Public Access Areas means (1) the areas designated as "Public Access Areas" and "Historic Railroad Corridor" as shown generally on Exhibit E, and (2) other portions of the Property, if any, which are designated as public access areas in an instrument executed by Tenant and Port and recorded in the Official Records, which recites that it has been recorded to satisfy one or more conditions imposed in connection with the grant of a Regulatory Approval. Unless otherwise specified in a recorded instrument executed by Port, the designation of any portion of the Property as a Public Access Area shall expire and cease to have any effect upon the expiration or earlier termination of this Lease. In addition, unless otherwise specified in a recorded instrument executed by Port and Tenant, the designation of a portion of the Property as a Public Access Area shall expire if the Regulatory Approval, in connection with which such designation was recorded, expires or otherwise terminates.

Public Trust means the tidelands public trust for commerce, navigation and fisheries, including, without limitation, the Burton Act Trust.

Regulatory Approval means any authorization, approval or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, BCDC, RWQCB, and the Army Corps of Engineers.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease or the DA by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

Remediate or Remediation when used with reference to Hazardous Materials

means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. 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.

Rent as defined in Section 2.2.

Rent Commencement Date as defined in Section 2.3(a).

Rentable Area means the usable area of an office space or retail space, with its pro rata share of building common areas.

Restoration means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable; provided that Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements, as Restored, constitute a first-class Project. In connection with any Restoration, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Project as so redesigned complies with applicable requirements of the Tidelands Trust and is a first-class Project affording similar public benefit as the original Project, subject to the provisions of Section 10 relating to Subsequent Construction. All Restoration shall be conducted in accordance with the provisions of Section 10. ("Restore" and "Restored" shall have correlative meanings.)

RWQCB means the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

Schedule of Performance as defined in the DA.

Schematic Drawings means conceptual drawings in sufficient detail to describe a development proposal.

Security Deposit as defined in Section 15.1.

Significant Change means any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Tenant, directly or indirectly, in one or a series of related transactions, that results in a change in the identity of Persons Controlling Tenant, provided that a Significant Change will not include the Transfer of beneficial interests in any Person as a result of the trading of shares on the open-market where such Person is a publicly-traded company. The sale of fifty percent (50%) or more of Tenant's assets, capital or profits, or the assets, capital or profit of any Person Controlling Tenant, except to an Affiliate shall also be a Significant Change.

Special Control means the power to direct the affairs or management of another

Person, whether by contract, operation of Law or otherwise (and Specially Controlling and Specially Controlled shall have correlative meanings).

State as defined in Section 1.1(c).

Sublease means any lease, sublease, license, concession or other agreement (including, without limitation, the Port Sublease) by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

Subsequent Construction means all repairs to and reconstruction, replacement, addition, expansion, Restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Initial Improvements pursuant to the DA.

Substantial Condemnation as defined in Section 13.3(a).

Substructure means the pier substructure, including without limitation, the decking, slab, and pilings.

Subtenant means any Person leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

Tenant means AMB Property, L.P., a Delaware limited partnership, and its permitted successors and assigns.

Tenant's Fair Rental Value as defined in Section 2.5(b)(v)

Term as defined in Section 1.2.

Total Condemnation as defined in Section 13.2.

Total Rental Income as defined in Section 2.5(b)(i).

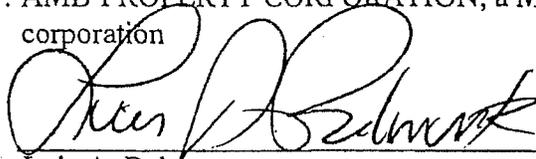
Work as defined in Section 10.8.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT

AMB PROPERTY, L.P.,
a Delaware limited partnership

By: AMB PROPERTY CORPORATION, a Maryland
corporation



By: Luis A. Belmonte
Its: Managing Director

PORT

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

By:



Douglas F. Wong
Executive Director

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By:



Neil H. Sekhri
Assistant Port General Counsel

Port Commission Resolution No. 99-17
Board of Supervisors Resolution No. 329-99

Lease Prepared by: Kirk Bennett
Manager, Waterfront Development Projects

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

EXHIBIT A

PIER 1 LEGAL DESCRIPTION

Being Pier 1, a former portion of Pier ½, and an adjacent portion of the Embarcadero of the San Francisco Port Commission, City and County of San Francisco, State of California and certain adjacent portions of San Francisco Bay, more particularly described as follows:

PARCEL 1 – PIER 1 AND BULKHEAD BUILDING

Commencing at the point of intersection of the monument line of Spear Street with the monument line of Mission Street, as said point is shown on Monument Map sheet 317 of the City and County of San Francisco, Department of Public Works, on file in the office of the Bureau of Street Use and Mapping of said Department of said City and County;

Thence along the northeasterly prolongation of said monument line of Mission Street, N 46° 18' 03" E, 699.07 feet;

Thence N 35° 02' 40" W, 1,242.19 feet, to a point on the westerly prolongation of a line along the southerly edge of the bulkhead building of said Pier 1, said point being the True Point Of Beginning;

Thence continuing N 35° 02' 40" W, 211.18 feet to a point on the westerly prolongation of a line along the southerly face of the southerly wall of the bulkhead building of Pier 1½;

Thence along said westerly prolongation, N 54° 50' 22" E, 50.80 feet, to a point on the easterly edge of the concrete deck of said Pier 1;

Thence along the outer edge of said deck through the following courses:

S 34° 16' 53" E, 11.17 feet to an angle point on said edge, hereinafter described as Point "A";

Thence N 87° 18' 01" E, 37.24 feet;

Thence N 54° 57' 20" E, 65.93 feet;

Thence N 35° 02' 40" W, 15.00 feet;

Thence N 54° 57' 20" E, 589.42 feet to a tangent curve, concave to the south, having a radius of 14.00 feet;

Thence northeasterly, easterly, and southeasterly along said curve, through a central angle of 90° 00' 00", an arc length of 21.99 feet;

Thence S 35° 02' 40" E, 108.32 feet to a tangent curve, concave to the west, having a radius of 14.00 feet;

Thence Southeasterly, southerly, and southwesterly along said curve, through a central angle of 90° 00' 00", an arc length of 21.99 feet, to a point hereinafter described as Point "B";

Thence tangent to last said curve, S 54° 57' 20" W, 143.22 feet to a tangent curve, concave to the southeast, having a radius of 313.25 feet;

Thence Southwesterly along said curve, through a central angle of 11° 02' 34", an arc length of 60.38 feet;

Thence tangent to last said curve, S 43° 54' 46" W, 130.70 feet;

Thence S 54° 57' 20" W, 360.50 feet to a point on the northeasterly wall of the bulkhead building of Pier 1;

Thence along said wall, S 35° 02' 40" E, 28.05 feet to the easterly corner thereof,

Thence along the southeasterly wall of last said bulkhead building, S 54° 58' 11" W, 0.97 feet to a point hereinafter described as Point "C";

Thence continuing along said southeasterly wall and its southwesterly prolongation, S 54° 58' 11" W, 44.49 feet to the True Point Of Beginning;

Containing 118,278 square feet (2.715 acres), more or less.

PARCEL 2

Being a portion of San Francisco Bay adjacent to said Pier 1, more particularly described as follows:

Beginning at herein above described Point "A";

Thence N 87° 18' 01" E, 37.24 feet;

Thence N 54° 57' 20" E, 65.93 feet;

Thence N 35° 02' 40" W, 15.00 feet;

Thence S 54° 57' 20" W, 72.36 feet;

Thence S 87° 18' 01" W, 29.46 feet;

Thence S 34° 16' 53" E, 10.84 feet to the Point of Beginning;

Containing 1,345 Sq. Ft. (0.031 ACRES), more or less.

PARCEL 3

Being a portion of San Francisco Bay adjacent to said Pier 1, more particularly described as follows:

Beginning at herein above described Point "B";

Thence N 54° 57' 20" E, 17.17 feet to a tangent curve, concave to the west, having a radius of 15.00 feet;

Thence northeasterly, northerly, and northwesterly 23.56 feet along said curve, through a central angle of 90° 00' 00";

Thence tangent to curve N 35° 02' 40" W, 106.31 feet to the beginning of a tangent curve, concave to the south, having a radius of 15.00 feet;

Thence northwesterly, westerly, and southwesterly 23.56 feet along said curve, through a central angle of 90° 00' 00";

Thence tangent to the preceding curve S 54° 57' 20" W, 17.17 feet, to the beginning of a tangent curve, concave to the south, having a radius of 14.00 feet;

Thence northeasterly, easterly, and southeasterly 21.99 feet along said curve, through a central angle of 90° 00' 00";

Thence tangent to the preceding curve, S 35° 02' 40" E, 108.32 feet to the beginning of a tangent curve, concave to the west, having a radius of 14.00 feet;

Thence Southeasterly, southerly, and southwesterly 21.99 feet along said curve, through a central angle of 90° 00' 00", to the Point of Beginning;

Containing 2,464 Sq. Ft. (0.057 ACRES), more or less.

PARCEL 4

Being a portion of San Francisco Bay adjacent to said Pier 1, more particularly described as follows:

Beginning at herein above described Point "C";

Thence S 35° 31' 09" E, 10.51 feet;

Thence N 54° 28' 28" E, 4.22 feet;

Thence S 34° 31' 02" E, 25.64 feet;

Thence N 54° 57' 20" E, 22.63 feet;

Thence N 35° 02' 40" W, 30.47 feet;

Thence N 54° 57' 20" E, 123.39 feet;

Thence N 35° 02' 40" W, 33.69 feet;

Thence S 54° 57' 20" W, 149.12 feet;

Thence S 35° 02' 40" E, 28.05 feet;

Thence S 54° 58' 11" W, 0.97 feet, to the Point of Beginning;

Containing 5,736 Sq. Ft. (0.132 ACRES), more or less.

PARCEL 5

Being a former portion of Pier ½ and an adjacent portion of The Embarcadero of the San Francisco Port Commission, City and County of San Francisco, State of California, more particularly described as follows:

Beginning at herein above described Point "C";

Thence S 35° 31' 09" E, 10.51 feet;

Thence N 54° 28' 28" E, 4.22 feet;

Thence S 34° 31' 02" E, 25.64 feet;

Thence S 54° 57' 20" W, 44.61 feet;

Thence N 35° 02' 40" W, 36.13 feet;

Thence N 54° 58' 11" E, 40.54 feet, to the Point of Beginning;

Containing 1,573 Sq. Ft. (0.036 ACRES), more or less.

EXHIBIT B

SITE PLAN

EXHIBIT B

LINES -- PARCEL 1

LINE	BEARING	DISTANCE
L1	N35°02'40"W	211.18'
L2	N54°50'22"E	50.80'
L3	S34°16'53"	11.17'
L4	N87°18'01"E	37.24'
L5	N54°57'20"E	65.93'
L6	N35°02'40"W	15.00'
L7	N54°57'20"E	589.42'
L8	S35°02'40"E	108.32'
L9	S54°57'20"W	14.322'
L10	S43°54'46"W	130.70'
L11	S54°57'20"W	350.50'
L12	S35°02'40"E	28.05'
L13	S54°58'11"W	0.97'
L14	S54°58'11"W	44.49'

CURVES -- PARCEL 1

CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH
C1	14.00'	90°00'00"	21.99'
C2	14.00'	90°00'00"	21.99'
C3	313.25'	11°02'34"	60.38'

LINES -- PARCEL 2

LINE	BEARING	DISTANCE
L4	N87°18'01"E	37.24'
L5	N54°57'20"E	65.93'
L6	N35°02'40"W	15.00'
L15	S54°57'20"W	72.36'
L16	S87°18'01"W	29.46'
L17	S34°16'53"E	10.84'

CURVES -- PARCEL 3

CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH
C4	15.00'	90°00'00"	23.56'
C5	15.00'	90°00'00"	23.56'
C1	14.00'	90°00'00"	21.99'
C2	14.00'	90°00'00"	21.99'

LINES -- PARCEL 3

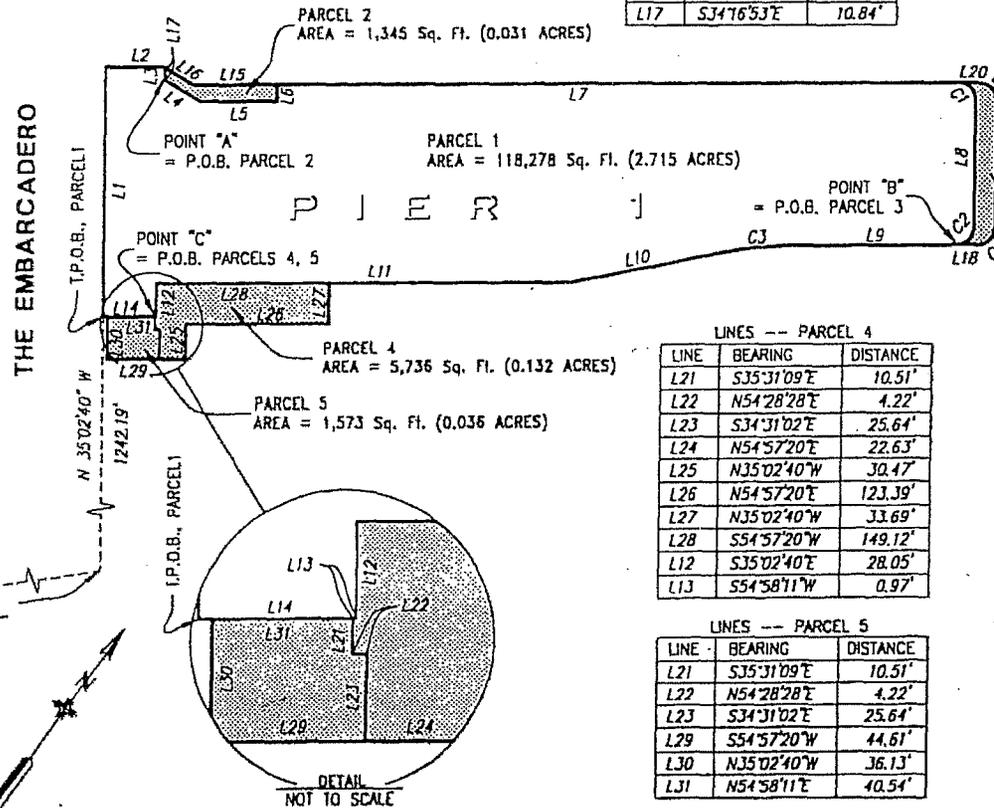
LINE	BEARING	DISTANCE
L18	N54°57'20"E	17.17'
L19	N35°02'40"W	106.31'
L20	S54°57'20"W	17.17'
L8	S35°02'40"E	108.32'

LINES -- PARCEL 4

LINE	BEARING	DISTANCE
L21	S35°31'09"E	10.51'
L22	N54°28'28"E	4.22'
L23	S34°31'02"E	25.64'
L24	N54°57'20"E	22.63'
L25	N35°02'40"W	30.47'
L26	N54°57'20"E	123.39'
L27	N35°02'40"W	33.69'
L28	S54°57'20"W	149.12'
L12	S35°02'40"E	28.05'
L13	S54°58'11"W	0.97'

LINES -- PARCEL 5

LINE	BEARING	DISTANCE
L21	S35°31'09"E	10.51'
L22	N54°28'28"E	4.22'
L23	S34°31'02"E	25.64'
L29	S54°57'20"W	44.61'
L30	N35°02'40"W	36.13'
L31	N54°58'11"E	40.54'



NOTES:

1. DISTANCES SHOWN ARE GROUND DISTANCES.
2. BASIS OF BEARINGS IS THE BEARING OF THE MONUMENT LINE OF MISSION STREET, SHOWN AS N 46° 18' 03" E, ON THE MAP TITLED SURVEY "E" OF THE HARBOR COORDINATE SURVEY, SHEET NO. 6460 - 409 TO 414 - 2, ON FILE IN THE OFFICE OF THE CHIEF HARBOR ENGINEER OF THE PORT OF SAN FRANCISCO, CALIFORNIA.

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE _____

CHIEF HARBOR ENGINEER

PORT OF SAN FRANCISCO
SAN FRANCISCO PORT COMMISSION
DEPARTMENT OF ENGINEERING

PIER 1
SITE MAP

DESIGNED BY: J. SOBOL	CHECKED BY: ----
DRAWN BY: AMN	DATE: 02 AUG 99
DATA FILE: ----	SCALE: 1" = 160'
DRAWING NO. PUB_ACC.DWG	SHEET NO. 1 OF 1 SHEETS

EXHIBIT C

PERMITTED TITLE EXCEPTIONS

**EXHIBIT C
PERMITTED TITLE EXCEPTIONS**

1. **GENERAL AND SPECIAL TAXES FOR THE FISCAL YEAR 1999-2000, NOW A LIEN, NOT YET DUE OR PAYABLE.)**
2. **GENERAL AND SPECIAL TAXES FOR THE FISCAL YEAR 1998-99 NOT ASSESSED BY REASON OF PREMISES BEING VESTED IN THE CITY OF SAN FRANCISCO. (ASSESSOR'S LOT 1 AND LOT 1H, BLOCK 9900.)**
3. **THE LIEN OF SPECIAL TAX ASSESSED PURSUANT TO CHAPTER 2.5 COMMENCING WITH SECTION 53311 OF THE CALIFORNIA GOVERNMENT CODE FOR COMMUNITY FACILITIES DISTRICT NO. 90-1, AS DISCLOSED BY NOTICE OF SPECIAL TAX LIEN RECORDED JULY 5, 1990 AS DOCUMENT NO. E573343 IN BOOK/REEL F160 AT PAGE/IMAGE 1044 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA.**
4. **THE LIEN OF SUPPLEMENTAL TAXES ASSESSED PURSUANT TO CHAPTER 3.5 COMMENCING WITH SECTION 75 OF THE CALIFORNIA REVENUE AND TAXATION CODE.**
5. **THE CONDITIONS, RESTRICTIONS, LIMITATIONS, POWERS, DUTIES, TRUSTS, REVERSIONARY RIGHT AND OTHER RIGHT CREATED OR RESERVED IN THE LEGISLATIVE GRANT OF "LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO, PURSUANT TO CHAPTER 1333, STATUTES OF 1968, AND IN SUBSEQUENT AMENDING STATUTES AFFECTING TIDE AND SUBMERGED LANDS.**
6. **THE TERMS, PROVISION AND CONDITIONS CONTAINED IN A DOCUMENT EXECUTED BY THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION AND AMB PROPERTY CORPORATION, PURSUANT TO PERMIT NO. 2-99, RECORDED RECORDED JUNE 18, 1999, DOCUMENT NO. 99-G607708-00- REEL H409, IMAGE 748 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO..**
7. **"AGREEMENT RELATING TO THE TRANSFER OF THE PORT OF SAN FRANCISCO FROM THE STATE OF CALIFORNIA TO THE CITY AND COUNTY OF SAN FRANCISCO" EXECUTED BY AND BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND THE DIRECTOR OF FINANCE OF THE STATE OF CALIFORNIA AND THE SAN FRANCISCO PORT AUTHORITY RECORDED JANUARY 30, 1969, IN BOOK B308 OF OFFICIAL RECORDS, PAGE 686, INCLUSIVE, INSTRUMENT NO. R40413.**
8. **"MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO" SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA FILED IN BOOK "W" OF MAPS AT PAGES 66 THROUGH 72 IN THE CITY AND COUNTY OF SAN FRANCISCO RECORDER'S OFFICE, A COPY OF WHICH WAS RECORDED MAY 14, 1976, IN OFFICIAL RECORDS OF CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, INSTRUMENT NO. Y88209.**
9. **THE PORT SUBLEASE, PURSUANT TO SECTION 3.05(B)(II) OF THE DEVELOPMENT AGREEMENT, AND ANY OTHER SUBLEASES ENTERED INTO BY DEVELOPER.**

10. THE FOLLOWING MATTERS DISCLOSED BY AN ALTA/ACSM SURVEY MADE BY KCA ENGINEERS, INC., ON JUNE 24, 1999, AND REVISED JULY 9, 1999, DESIGNATED JOB NO. 4784.
 - A. ENCROACHMENT OF PILINGS OVER THE NORTH, SOUTH AND EAST LINES.
 - B. ENCROACHMENT OF A BUILDING AND STAIRS FROM THE PROPERTY TO THE NORTH ONTO THE SUBJECT PROPERTY.

11. THE TERMS AND PROVISIONS OF AN UNRECORDED DEVELOPMENT AGREEMENT DATED MARCH 9, 1999, BETWEEN THE PORT OF SAN FRANCISCO AND AMB PROPERTY, L.P. < A DELAWARE LIMITED PARTNERSHIP, SAID AGREEMENT HAVING BEEN DISCLOSED TO FIRST AMERICAN TITLE INSURANCE COMPANY.

EXHIBIT D

BUDGET

**EXHIBIT D
LEASE FOR PIER 1
BUDGET**

CONSTRUCTION BUDGET:		
HARD COSTS		
Pier Substructure		\$6,411,000
Core & Shell Construction		12,753,000
Tenant Improvements		5,386,000
General Conditions		1,970,000
		<u>26,520,000</u>
Bonds, Insurance, & City Taxes		928,000
Contractor's Overhead & Profit		961,000
	Hard Costs Subtotal	<u>28,409,000</u>
Construction & Design Contingency *	None	0
Cost escalation for 1 Year	2.5%	710,225
		<u>29,119,225</u>
Less: Reimbursement of over standard tenant improvements	Standard @ \$32.50 excluding A&E and general conditions	<u>(521,000)</u>
	Total Hard Costs	<u>28,598,225</u>
SOFT COSTS		
Design & Construction Management Fees		4,163,000
Testing, Permits & Other Owner Costs		358,000
City Exactions		1,137,000
FF&E for Common Areas		250,000
Leasing Commissions	Other Maritime Space @ \$10.00	577,910
Interest During Construction **		1,959,000
Legal & Accounting Fees **		400,000
Non-Refundable Deposit		100,000
Construction Period Ground Rent		0
	Total Soft Costs	<u>8,944,910</u>
Construction Costs Subtotal		<u>37,543,135</u>
Less: Port's share Historic Tax Credit Sale Proceeds	@ 95% x 20% x 85% x 50% ***	<u>(3,031,608)</u>
TOTAL CONSTRUCTION COSTS		<u>\$34,511,526</u>

TENANT RENTAL INCOME (Triple Net) TO AMB:						
	Usable Sq. Ft.	Rentable Sq. Ft. @15% Load	Rent Per Sq. Ft.	Rent Year 1	Rent Year 6****	
Port space	45,630	52,475	\$35.00	\$1,836,608	\$2,176,380	
Other office subtenants space	50,253	57,791	\$36.50	2,109,370	2,499,603	
Space occupied by Tenant (AMB)	34,280	39,422	\$40.00	1,576,880	1,868,603	
	Subtotal: Office Space	130,163		5,522,857	6,544,586	
Pier One Deli	1,631	1,876	\$30.00	56,270	66,679	
PROJECTED TOTAL RENTAL INCOME	131,794	151,563		<u>\$5,579,127</u>	<u>\$6,611,265</u>	
TOTAL RENTAL INCOME				\$5,579,127	\$6,611,265	
EXCESS RENTAL INCOME					\$1,032,138	

LEASE RENTAL ANALYSIS:			
		Rent Year 1	Rent Year 6****
Total Construction Costs		\$34,511,526	
PROJECTED TOTAL RENTAL INCOME		5,579,127	
Less: Required Return to Tenant (AMB)	Total Construction Costs @ 11%	<u>(3,796,268)</u>	
MINIMUM RENT DUE PORT	Constant throughout Lease term	<u>1,782,859</u>	<u>1,782,859</u>
PARTICIPATION RENT DUE PORT	50% of Excess Rental Income	<u>1,782,859</u>	<u>516,069</u>
RENT DUE PORT	Shows Minimum and Participation Rent, but not Additional Rent	<u>1,782,859</u>	<u>2,298,928</u>
Less: Port Base Rent (Due under Port Sublease)		(1,836,608)	(2,176,380)
Less: Amortization of Port Tenant Improvements over Standard pursuant to Port Sublease	\$10.50 (estimated) psf 180-month amortization @ 9%	(67,000)	(67,000)
NET Rent Due Port/(Due AMB)		<u>(\$120,749)</u>	<u>\$55,548</u>

- * Maximum Construction & Design Contingency equals fifteen percent (15%) of Hard Costs Subtotal.
- ** Construction interest calculated on funds expended @ interest rate not to exceed 9% per annum, Excludes all points, fees, interest and other expenses regarding any permanent / take-out financing.
- *** Assumes that 20% Historic Tax Credits sold at 85% discount to third party and that 95% of costs eligible.
- **** Year 6 represents an example for purposes of demonstrating Participation Rent calculation.

EXHIBIT E

PIER 1 LEASE
SCOPE OF DEVELOPMENT

EXHIBIT E

SCOPE OF DEVELOPMENT & SCHEMATIC DRAWING OF SITE PLAN AND GROUND FLOOR PLAN

The proposed project involves the redevelopment and historic rehabilitation of Pier 1 to provide approximately 130,163 usable square feet of office space, approximately 39,340 square feet of public access, and approximately 1,631 square feet of restaurant space. As of the Effective Date of the Lease, approximately 45,630 usable square feet of office space will be occupied by the Port of San Francisco, including meeting facilities, approximately 34,280 usable square feet of the office space will be used by AMB Property Corporation or an Affiliate and approximately 50,253 usable square feet shall be subject to priority maritime office use in accordance with the Maritime Marketing Plan set forth in the Lease. Tenant improvements and finishes shall be consistent with a quality office development located in the San Francisco Financial District. The existing Pier 1 Deli will be remodeled. The public access areas will be restricted for public access uses consistent with BCDC requirements and will include a new deck to be constructed over the existing concrete piles at the south side of the pier. The deck will accommodate outdoor seating for the existing Pier 1 Deli and provide space for Port events. The apron along the south side of the pier will be raised level with the interior finish floor of the shed. The east apron will be widened at least to match the width of the south apron. The north apron will be reconfigured where it meets the bulkhead. The interior and exterior of the bulkhead and shed will be rehabilitated according to the Secretary of the Interior's Standards for Rehabilitation. The proposed project will also include seismic and structural upgrades and improvements to mechanical systems.

The general design of the Project will be consistent with the Schematic Drawings, dated January 19, 1999, agreed-upon by the Waterfront Design Advisory Committee on January 27, 1999, and attached as Attachment 11. Detailed design of the public access elements of the project, including railing, surface treatments, lighting, trash receptacles, furniture, signage, public art (if any), planting, color and canopies will be as approved and adopted by the Port in accordance with the DA.

Exhibit E
Pier 1 Schematic Drawing
of Site Plan and Ground Floor Plan

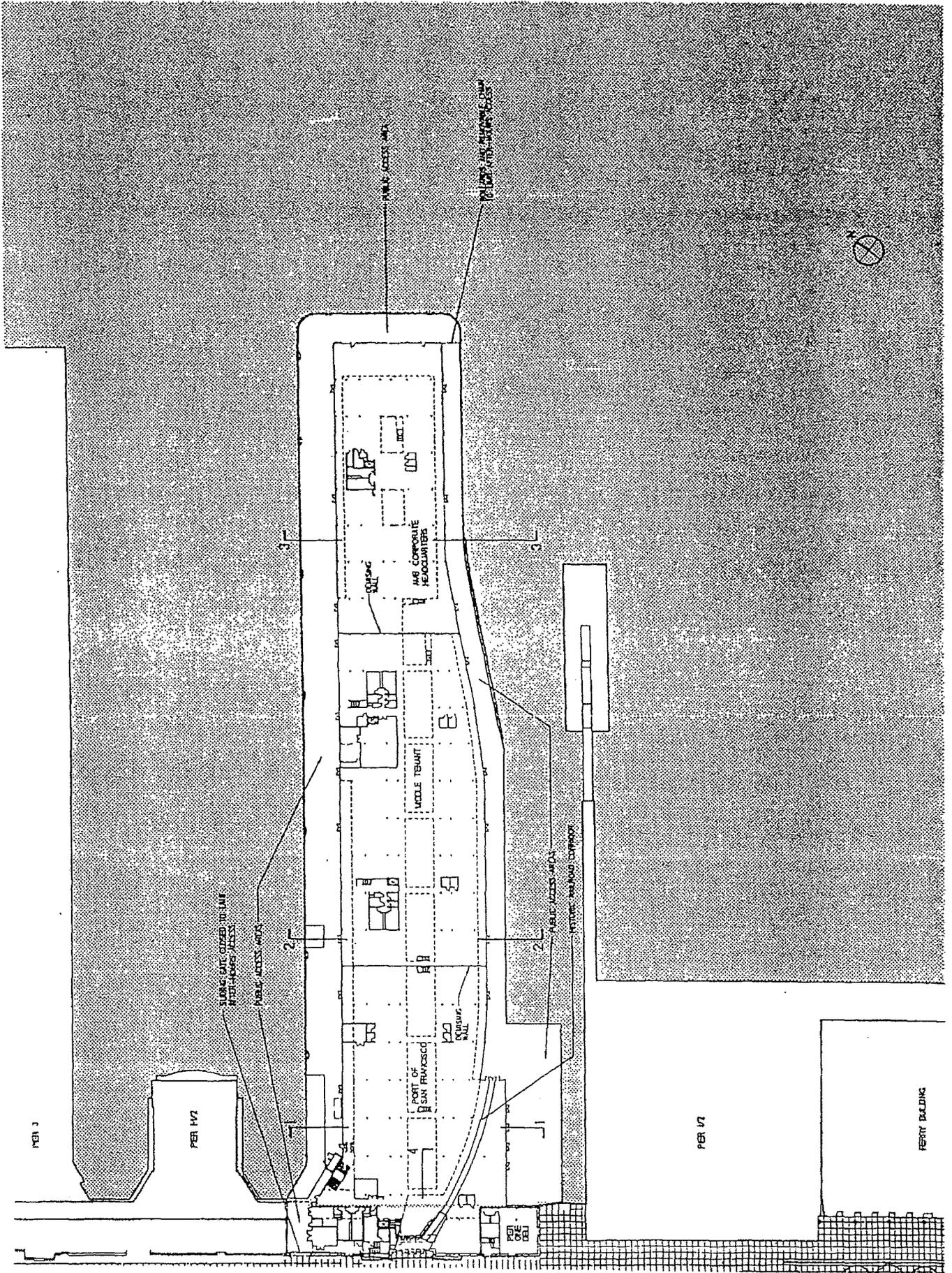


EXHIBIT F
FORM OF
NON-DISTURBANCE AGREEMENT

EXHIBIT F

FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") dated for reference purposes as of _____, _____ is made by the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through its Port Commission ("Port") and _____ ("Subtenant").

THIS AGREEMENT is made with reference to the following facts and circumstances:

A. Port has leased to AMB Property, L.P., a Delaware limited partnership ("Tenant"), that certain real property and improvements located at Pier 1 in San Francisco, California, pursuant to that certain Lease between Port and Tenant, dated August 2, 1999. Terms which are initial capitalized in this Agreement which are defined in the Lease shall have the meaning therein specified, except as the context otherwise requires.

B. Pursuant to the Lease, Tenant has developed and is operating a maritime-related office building on the Pier 1 premises (the ("Premises")).

C. Pursuant to the terms and provisions of the Lease, Tenant has entered into a Sublease, dated as of August 2, 1999, with Subtenant and, in accordance with the provisions of Section 16.4 of the Lease, has requested Port to enter into this Non-Disturbance and Attornment Agreement with respect to the Sublease.

D. Accordingly, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Port and Subtenant hereby agree as follows:

1. Attornment. If Port succeeds to the interest of Tenant as sublandlord under the Sublease by reason of any termination of the Lease by Port due to Tenant's default thereunder (following any notice and cure provisions provided therein, including Mortgagee protection provisions), or by any other manner or for any other reason, it is agreed that Subtenant shall be bound to Port and Port shall be bound to Subtenant, under all of the terms, covenants and conditions of the Sublease for the remaining balance of the term thereof, with the same force and effect as if Port were the original sublandlord under the Sublease and Subtenant shall attorn to Port. such attornment to be effective and self-operative without execution of any further instruments on the part of any of the parties to this Agreement, immediately upon Port succeeding to the interest of Tenant as sublandlord under the Sublease.

2. Non-Disturbance. So long as Subtenant is not in default under the Sublease, which default shall not have been cured or is not in process of being cured within the applicable grace period provided for in the Sublease, Port shall:

(a) recognize the Sublease to be in full force and effect;

(b) not disturb or terminate Subtenant's subleasehold estate under the Sublease by reason of any default by Tenant under the Lease; and

(c) permit Subtenant to remain in quiet and peaceable possession of the leased premises throughout the balance of the term of the Sublease (including, without limitation, any renewal terms thereunder) in accordance with the provisions of the Sublease; provided, however:

(i) Port shall not be liable for or obligated to cure any monetary default under the Sublease occurring prior to the time that Port succeeds to Tenant's interest as sublandlord under the Sublease, nor be subject to any offsets, defences or claims that Subtenant may be able to assert against Tenant as its sublandlord;

(ii) subject to Section 3 below, Port shall not be liable for or obligated to cure any non-monetary default under the Sublease occurring prior to the time Port succeeds to Tenant's interest as sublandlord under the Sublease; and

(iii) Port shall not be bound by any modification or amendment of the Sublease made without Port's written consent, except as otherwise permitted in the Lease.

3. Notice and Opportunity to Cure Under Sublease. Port shall be entitled to notice and opportunity cure any default by Tenant as sublandlord under the Sublease as follows:

(a) Notices of Default. Subtenant shall give Port a copy of any and all notices of default or of the occurrence of an event of default from time to time given to Tenant, as sublandlord under the Sublease, by Subtenant at the same time as and whenever any such notice shall thereafter be given by Subtenant to Tenant. Such notice shall be addressed to Port in the manner for delivery of notices provided in the Lease.

(b) Port's Cure Rights. In the case of any notice of default given by Subtenant to Tenant as sublandlord under the Sublease and the Port in accordance with subsection (a) above, Port shall have the same rights to cure Subtenant's default as are given to a Mortgagee under the Lease, and Subtenant shall accept such performance by or at the instance of Port as if the same had been made by Tenant; provided, however, if such default cannot be cured or remedied within such cure period, such cure period shall be extended so long as Port commences the cure or remedy within such period and prosecutes to completion thereof with diligence and dispatch.

5. General.

5.1 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

5.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.3 Counterparts. This Agreement 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.

5.4 Special Provisions. From and after the attornment of Subtenant to Port pursuant to Section 1 above, the provisions of Sections 42.1, 42.3, 42.4, 42.5 and 42.6 of the Lease shall be deemed to be incorporated by reference and made a part hereof as if set forth in full in this Agreement, except that "Subtenant" shall be substituted for "Tenant" as set forth in said Sections of the Lease.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Subtenant:

By _____

ACCEPTED AND AGREED:

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

By _____
_____, Executive Director

APPROVED AS TO FORM:

By _____
Deputy City Attorney

EXHIBIT G

FIRST SOURCE HIRING AGREEMENT

FIRST SOURCE HIRING AGREEMENT
Between AMB Property Corporation and Port of San Francisco

RECITALS

A. This First Source Hiring Agreement ("Agreement"), is made and entered as of this 2nd day of August, 1999, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), and AMB PROPERTY, L.P., a Delaware limited partnership ("Tenant"). This Agreement shall be administered by and through the City's First Source Hiring Administration ("FSHA").

B. The Port and Tenant have entered into a Development Agreement, dated as of March 9, 1999, and a Lease, dated as of August 2, 1999 ("Lease"), under which Tenant has agreed to lease from Port for a term of 50 years and to construct an office building and restaurant/deli at Pier 1, a Port-owned facility exceeding 50,000 square feet

C. This Agreement is made pursuant to the First Source Hiring Program ("Program") set forth in Chapter 83 of the San Francisco Administrative Code. Tenant is subject to the Program as a "Contractor" entering into a Property Contract with Port, as a "Developer" obtaining a Permit, and as an "Employer," as those terms are defined below and as they are defined under Section 83.4 of the San Francisco Administrative Code.

AGREEMENT

1. **Definitions.** For purposes of this Agreement, initially capitalized terms shall be defined as follows:

Commercial Activity: shall mean office and restaurant uses.

Contractor: shall mean an entity that has entered into a Property Contract with Port.

Developer: shall mean an entity that has the right under the San Francisco Planning Code and/or the San Francisco Building Code to make an application for approval of a Commercial Activity.

Development Project: shall mean Commercial Activity at Pier 1 which requires a Permit.

Economically Disadvantaged Individual: shall mean an individual who is either (a) eligible for services under the Job Training Partnership Act, 29 U.S.C. section 1503, as determined by the San Francisco Private Industry Council; or (b) designated as "economically disadvantaged" by FSHA as an individual who is at risk of relying upon, or returning to, public assistance.

Employer: shall mean Tenant, Contractor, Developer, agents of the Developer, any Subcontractor of Tenant, any Subtenant or other occupant of Tenant, or any person(s), firm, partnership, corporation, or combination thereof, engaged in the Commercial Activity in the Development Project.

Entry Level Position: shall mean a non-managerial position that requires either (1) no education above a high school diploma or certified equivalency; or (2) less than two years training or specific preparation. It shall include temporary and permanent jobs and construction jobs related to the Development Project.

First Opportunity: shall mean consideration by an Employer of the System referrals for filling Entry Level Positions prior to recruitment and hiring of non-System job applicants.

FSHA: First Source Hiring Administration, the body designated to administer and monitor the San Francisco Workforce Development System as set forth in section 83.6 of the San Francisco Administrative Code. **The FSHA Jobs Hotline number is (415) 749-7500 (CaJOBS).**

Good Faith Efforts: shall mean engaged in reasonable employment opportunity outreach including the development of recruitment, interview, hiring and Retention plans in collaboration with the System.

Interviewing Requirement: shall mean notification to the System of available Entry Level Positions, receipt of System referrals and fair consideration of System referrals for a specified period of time prior to recruitment and hiring of non-System job applicants.

Job Classification: shall mean categorization of employment opportunities or positions by craft, occupational title, skills and experience required, if any.

Permit: as of the date hereof, shall mean any building permit application for more than 50,000 square feet of Commercial Activity at Pier 1 which involves new construction, an addition, or alteration and which results in the expansion of entry level positions for the Commercial Activity. For Phase II of the Program (which will go into effect as of April 2001), "Permit" shall also include the definition thereof set forth in Section 83.4(m) of the San Francisco Administrative Code.

Program: shall mean the First Source Hiring Program set forth in Chapter 83 of the San Francisco Administrative Code.

Property Contract: shall mean the Lease between Port and Tenant for the exclusive use of Pier 1 to be used for the operation of one or more business establishments that create available Entry Level Positions.

Publicize: shall mean to advertise or post or to participate in job fairs or other forums in which employment information is available.

Qualified: shall mean an Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications designated and submitted to the System by an Employer.

Retention: shall apply to the Entry Level Positions, not to any particular individual.

System: shall mean the San Francisco Workforce Development System established by the City and managed by FSHA for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective Employers covered by the Program.

Subcontractor: shall mean any person(s), firm, partnership, corporation, or combination thereof, that has a direct contract with Tenant to perform construction work on, or Commercial Activity in, the Development Project at Pier 1.

Subtenant: shall mean any person(s), firm, partnership, corporation, or combination thereof (except City or Port), that has a direct contract with Tenant to sublease, occupy, franchise or license any portion of Pier 1 for a period exceeding 29 days.

Tenant: shall mean AMB Property, L.P., a Delaware limited partnership.

2. **Good Faith Efforts by Tenant.** Tenant, in its capacity as a Contractor entering into a Property Contract with Port, agrees to make Good Faith Efforts to fill Entry Level Positions at its company headquarters located at Pier 1, in San Francisco, California, through referrals from the System or a System-approved employment services provider.

3. **Good Faith Efforts by Subcontractors.** Tenant, in its capacity as a Developer applying for a Permit, agrees that in all contracts that it enters into with any Subcontractors, it shall require said Subcontractors to make Good Faith Efforts to fill their Entry Level Positions for construction jobs through referrals from the System or a System-approved employment services provider, and shall incorporate the requirements set forth in this Agreement in all relevant contracts it enters into with Subcontractors from and after the date of this Agreement. If the Tenant fulfills its obligations under this Agreement, Tenant shall not be held responsible for the failure of a Subcontractor to comply with the requirements of this Agreement or the Program, and City shall then have the remedies available to it under Section 13 against such Subcontractors, but Tenant shall have no further enforcement obligations against such Subcontractors.

4. **Good Faith Efforts by Subtenants.** Tenant, in its capacity as a Contractor entering into a Property Contract with Port, further agrees that in all contracts that it enters into with any Subtenants, Tenant shall require said Subtenants to make Good Faith Efforts to fill their Entry Level Positions through referrals from the System or a System-approved employment services provider, and shall incorporate the requirements set forth in this Agreement in all relevant contracts it enters into with Subcontractors from and after the date of this Agreement. If the Tenant fulfills its obligations under this Agreement, Tenant shall not be held responsible for the failure of a Subcontractor to comply with the requirements of this Agreement or the Program, and City shall then have the remedies available to it under Section 13 against such Subcontractors, but Tenant shall have no further enforcement obligations against such Subcontractors.

5. **First Opportunity.** Except to the extent that Tenant intends to fill an Entry Level Position from a pool of internal candidates, Tenant agrees to offer, and to require its Subcontractors and

Subtenants to offer, to the System the First Opportunity to provide Qualified Economically Disadvantaged Individuals for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Employers shall consider all applications of Qualified Economically Disadvantaged Individuals referred by the System for employment. So long as Employers utilize nondiscriminatory screening criteria, Employers shall have the sole discretion to interview, hire or reject individuals referred to them by the System.

6. **Interviewing Requirement.** The duration of the Interviewing Requirement shall be for the five (5) days immediately after Tenant notifies the System of the job availability (provided, however, that this requirement shall not apply to the extent that Tenant intends to fill an Entry Level Position from a pool of internal candidates). During this period, Employers may Publicize the availability of Entry Level Positions only through the System. The System referral telephone number is (415) 749-7500.

7. **Information to be Provided by Tenant and Subtenants.** Within thirty (30) days after Tenant takes physical occupancy of the premises under the Lease, Tenant shall complete and submit to the System the "Employer's Projection of Entry Level Positions" Form. Whenever an Entry Level Position becomes available during the term of the Lease, Tenant shall notify the System as soon as reasonably practicable and provide the information requested by FSHA. Tenant further agrees to include language in its Subleases entered into on or after the date of this Agreement, requiring its Subtenants to complete and submit to the System the "Employer's Projection of Entry Level Positions" Form within thirty (30) days after any Subtenant takes physical occupancy of Port premises under a sublease, and to notify the System as soon as reasonably practicable and provide the information requested by FSHA whenever an Entry Level Position becomes available in a Subtenant's company at the Pier 1 Premises during the term of the sublease.

8. **Information to be Provided by Subcontractors.** Tenant agrees to include language in its Subcontracts entered into on or after the date of this Agreement, requiring its Subcontractors, prior to commencing construction work at the Development Project, to complete and submit to the System the "Employer's Projection of Entry Level Positions" Form, and to notify the System promptly, and provide the information requested by FSHA, whenever an Entry Level Position construction job becomes available during the period of construction.

9. **Record-Keeping.** Tenant shall maintain accurate records, and shall include language in its Subcontracts and Subleases requiring its Subcontractors and Subtenants to maintain accurate records, demonstrating compliance with the Program, including tracking information on FSHA-approved forms, if requested. Tenant's records shall include, without limitation, records for each available Entry Level Position of the number of applicants referred, number of applicants interviewed, number of job offers made, number of applicants hired, and number of applicants rejected. If a significant number of positions are to be filled during a given period, or other circumstances warrant, FSHA may require daily, weekly or monthly reports containing all or some of the above information.

10. **Obligations of FSHA.** Tenant acknowledges that pursuant to the Program, the FSHA shall:

- a. Develop standardized forms for reporting, notification and tracking of employment needs and Entry Level Positions, and provide the same to Employers.
- b. Receive job notifications and job orders, and immediately initiate recruitment and pre-screening activities.
- c. Recruit Qualified Economically Disadvantaged Individuals to create a pool of applicants for jobs that match Employers' job specifications, and, to the extent appropriate, train applicants for jobs that will become available through the Program.
- d. Screen and refer applicants according to qualifications and specific selection criteria submitted by Employers.
- e. Provide funding for City-sponsored pre-employment and employment training, and for support services programs.
- f. Follow-up with Employers on results of applicant interviews and initiate corrective action as necessary to maintain an effective employment/training delivery system.
- g. Monitor compliance under this Agreement by examining the reporting, notification and tracking forms completed and submitted by Employers.

11. **Essential Functions.** Nothing in this Agreement precludes an Employer from using temporary employees to the extent that Tenant would be using such temporary employees in the ordinary course of business and Tenant is not using such temporary employees as a means to avoid the requirements of this Agreement. In addition, Tenant may hire employees on a temporary basis without complying with the provisions of this Agreement if Tenant reasonably determines that such hire is urgently needed to perform essential functions of its operation. In such event, the obligation to make Good Faith Efforts to fill such vacancies permanently with System referrals remains in effect unless Tenant provides evidence to City's reasonable satisfaction that re-filling such vacancy with System referrals would be infeasible or impracticable. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

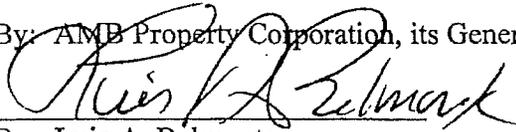
12. **Collective Bargaining Agreements.** Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. FSHA will take primary responsibility for integrating the requirements of the Program with any collective bargaining agreement.

13. **Remedies.** If Tenant or any of its Subcontractors or Subtenants fail to comply with this Agreement, Port or the City are entitled to the remedies set forth in Sections 83.10 and 83.12 of the San Francisco Administrative Code

TENANT

AMB Property, L.P., a Delaware limited partnership

By: AMB Property Corporation, its General Partner



By: Luis A. Belmonte

Its: Managing Director

PORT

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

By  _____
Douglas F. Wong
Executive Director

APPROVED AS TO FORM:
LOUISE H. RENNE
CITY ATTORNEY

BY  _____
DEPUTY CITY ATTORNEY

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January 2016 PROPOSITION G CALENDAR – SFDA

Friday, January 1st

Office Closed – New Years holiday

Saturday, January 2nd – Sunday, January 3rd

District Attorney Gascón has no public events scheduled

Monday, January 4th

2:00pm – 2:30pm – Phone call with University of Virginia Law School Professor Rachel Harmon re: *Graham v. Connor*

Tuesday, January 5th

11:00am – 12:00pm – Press Conference re: alternatives to building a jail in San Francisco
SFDA's office

Wednesday, January 6th

4:30pm – 6:00pm – State of Public Safety Address and Inauguration
HOJ – 6th Floor auditorium

Thursday, January 7th

11:30am – 12:00pm – Phone interview with the Center for Court Innovation re: Mass Incarceration

1:00pm – 3:00pm – Memorial Services for Beatrice Jackson
Third Baptist Church - 1399 McAllister Street, San Francisco, CA 94115

4:30pm – 5:00pm – Press availability re: People v. Schenone
SFDA's office

Friday, January 8th

District Attorney Gascón to conduct office hours - no public events scheduled

Saturday, January 9th - Sunday, January 10th

District Attorney Gascón has no public events scheduled

Monday, January 11th

10:00am – 10:30am – Phone Interview with Isabelle Gutierrez from KIQI re: Blue Ribbon Panel on Transparency, Fairness and Accountability in Law Enforcement

12:00pm – 1:30pm – Lunch with Supervisor Aaron Peskin
Original Joes 601 Union St, San Francisco, CA 94133

2:00pm – 2:30pm – Phone call with Wichita District Attorney Marc Bennet re: SFDA's Alternative Sentencing Program and Neighborhood Prosecutors Program

Tuesday, January 12th

10:00am – 10:30am – Speak at the 2016 Human Trafficking Awareness Campaign Kickoff Press Conference and Modern-day Abolitionist Awards Ceremony
San Francisco City Hall

1:30pm – 2:30pm – Introductory meeting with Ethics Commission Executive Director LeeAnn Pelham, other attendees: Ethics Commission Chair Paul Renne SFDA Staff: Cristine DeBerry, Sharon Woo and June Cravett
SFDA's office

January 2016 PROPOSITION G CALENDAR – SFDA

3:30pm – 5:00pm – SFDA’s Middle Eastern Advisory Board meeting - Attendees: Miriam Zouzounis, Nasrina Bargzie, Brice Hamack, Lidhya Prabhakaran, Hala Hajazi, SFDA Staff: Sam Totah, Rani Singh, Marc Massarweh, Alex Bastian
SFDA’s office

Wednesday, January 13th

District Attorney Gascón to conduct office hours - no public events scheduled

Thursday, January 14th

1:00pm – 5:00pm – Attend the second hearing of the Blue Ribbon Panel on Transparency, Fairness and Accountability in Law Enforcement
San Francisco Main Public Library – Hispanic Room

7:00pm – 9:00pm – Attend the Justice for Mario Woods Coalition meeting
SEIU – 350 Rhode Island, South Building, Suite 100, San Francisco

Friday, January 15th

District Attorney Gascón to conduct office hours - no public events scheduled

Saturday, January 16th - Sunday, January 17th

District Attorney Gascón has no public events scheduled

Monday, January 18th

Office Closed – Martin Luther King Jr. Holiday

Tuesday, January 19th

12:00pm – 1:30pm – Meeting with Superintendent Richard Carranza, UESF President Lita Blanc, UASF President Liana Szeto, Katie Dooley-Hedrick, No Kid Hungry, Billy Shore, No Kid Hungry, Frank Barberi, YuMi, and Ken Trey UESF re: Breakfast in Public Schools
SFDA’s office

4:00pm – 5:00pm – Phone call with Ace Smith and David Mills re: Mental Health SFDA Staff: Cristine DeBerry

Wednesday, January 20th

10:00am – 11:00am – Coffee with Tom Mazzuco re: Public Safety
The Grove – 690 Mission Street, San Francisco

11:30am – 12:00pm – Phone call with Jeff Johnson JIJ Communications re: Mental Health SFDA Staff: Cristine DeBerry

Thursday, January 21st

District Attorney Gascón to conduct office hours - no public events scheduled

Friday, January 22nd

1:00pm – 2:00pm – Press Conference with City Attorney Dennis Herrera and FBI SAC Dave Johnson re: Corruption Charges filed against Zula Jones, Keith Jackson, Nazly Mohajer
SFDA’s office

Saturday, January 23rd - Sunday, January 24th

District Attorney Gascón has no public events scheduled

Monday, January 25th

1:00pm – 1:30pm – Attend the Drug Court Graduation

EXHIBIT H

FORM OF
MEMORANDUM OF LEASE

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

AMB PROPERTY, L.P.
c/o Sheppard, Mullin, Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111
Attention: Robert A. Thompson, Esq.

FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum"), dated for reference purposes as of this ____ day of August 1999, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Landlord") and AMB PROPERTY L.P., a Delaware limited partnership ("Tenant").

Recitals

A. Concurrently herewith, Landlord and Tenant have entered into that certain Lease (the "Lease"), pursuant to which Landlord leased to Tenant and Tenant leased from Landlord the real property (the "Premises") more particularly described in the attached Exhibit A and Exhibit B which is incorporated by this reference.

B. Landlord and Tenant desire to execute this Memorandum to provide constructive notice of Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Landlord leases the Premises to Tenant for a term commencing on August ____, 1999, which is the date upon which Port delivers possession of the Premises to Tenant in accordance with that certain agreement entitled "Pier 1 Development Agreement" (the "Commencement Date"). Concurrently with the Lease, Landlord and Tenant have entered into the Pier 1 Development Agreement. The Term of the Lease shall expire on the date that is fifty (50) years after the Commencement Date, unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. This lease of the Premises to Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

TENANT:

AMB Property, L.P.,
a Delaware limited partnership

By: AMB Property Corporation, a Maryland
Corporation
Its: General Partner

By: Luis A. Belmonte
Its: Managing Director

LANDLORD:

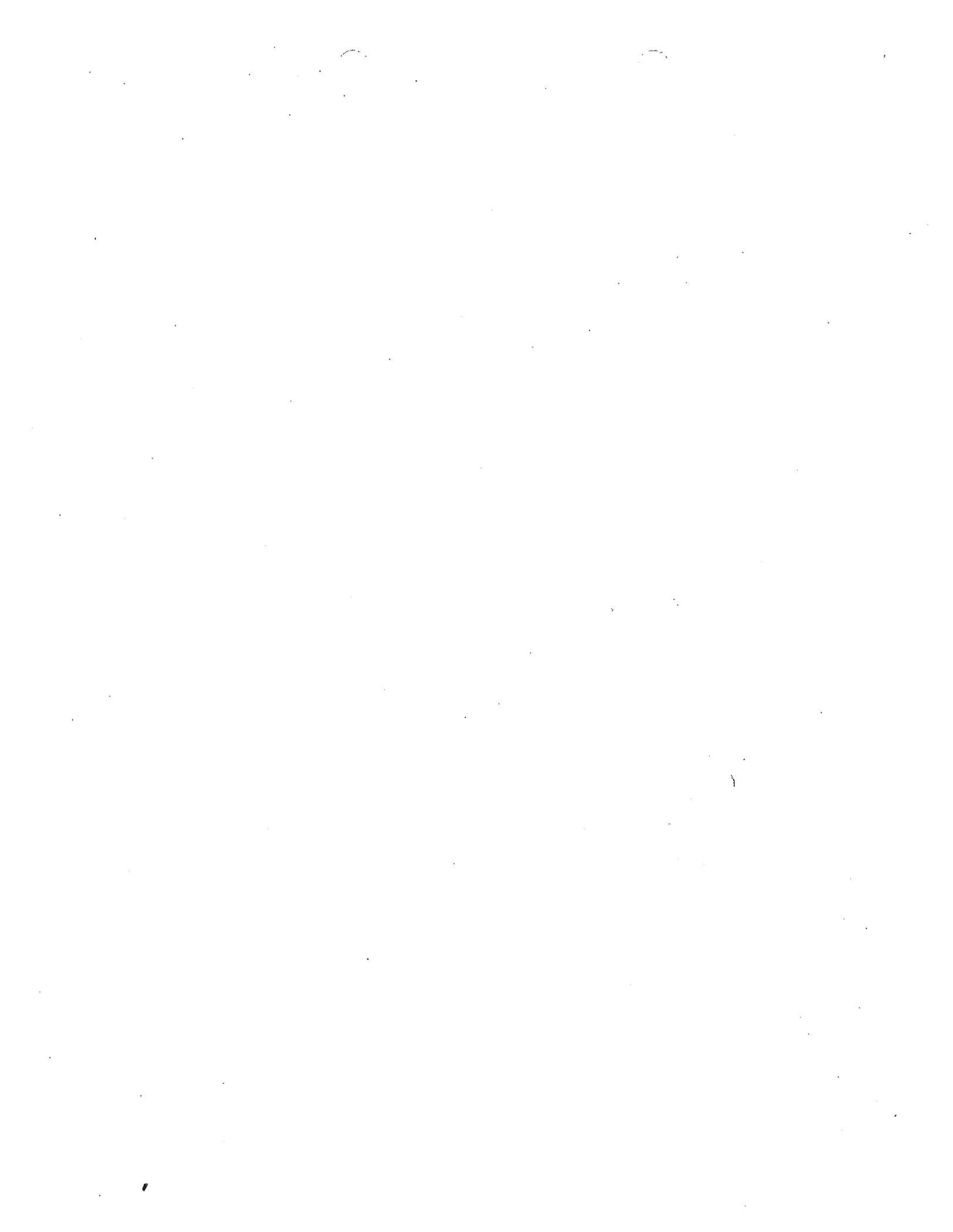
CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation,
operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Douglas F. Wong
Executive Director

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By: _____
Neil H. Sekhri
Assistant Port General Counsel



PIER ONE
San Francisco, California

SUBLEASE

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PIER ONE
San Francisco, California

SUBLEASE

THIS SUBLEASE made as of August 2, 1999, by and between **AMB PROPERTY, L.P.**, a Delaware limited partnership ("Sublandlord") and **THE CITY AND COUNTY OF SAN FRANCISCO** ("City"), **THROUGH THE SAN FRANCISCO PORT COMMISSION** ("Port"), is made upon the following facts, intentions and understandings of the parties.

RECITALS

A. On June 24, 1997, the Port Commission approved the Waterfront Land Use Plan, including the Design and Access element. One of the first areas of Port land to be slated for development under the Waterfront Land Use Plan and implementing legislation is the Ferry Building Harbor Area, bounded by Pier 1 in the north, extending through the mid-Embarcadero roadway, Ferry Building, Ferry Building Plaza and ferry terminals, and the Agricultural Building to the south.

B. The Port's plan for improvements to the Ferry Building Harbor Area includes an historic rehabilitation of the Pier 1 bulkhead and shed. The foremost reasons for the project are to achieve renovation of Pier 1 to preserve the historic integrity and aesthetic character of the Ferry Building Harbor Area, to implement the Port's public access plan for the Ferry Building Harbor Area, and to facilitate renovation of the Ferry Building and establish a highly visible public presence for the Port in the Ferry Building Harbor Area by accommodating Port of San Francisco administrative offices.

C. In order to facilitate the rehabilitation of Pier 1, the Port issued a Request for Interest and Qualifications ("RFI&Q"), dated January 21, 1998, soliciting interest and qualifications from qualified parties to develop and master lease Pier 1 as a maritime-related office complex. The Port Commission chose Sublandlord based on its commitment to occupying the building as a project manager and co-tenant and on its financial capacity, development concept, responsiveness to public access and public trust objectives, and shorter lease term (50 years), and the opportunity for the Port to participate in the economic benefits of the Project.

D. The Port and Sublandlord have entered into a Development Agreement, dated as of March 9, 1999, governing the conditions to delivery of the Premises to Sublandlord for development of the Initial Improvements, and the rights and obligations of the parties to develop the Initial Improvements. As contemplated in

the Development Agreement, the parties have executed a Master Lease for Pier 1, dated of even date herewith ("Master Lease").

E. The Development Agreement also provides that Sublandlord will sublease a portion of Pier 1 to the Port for a term coterminous with the Master Lease. The parties now desire to enter into this Sublease on all of the terms and conditions hereof.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

PREMISES AND TERM

A. **Premises.** Subject to the provisions herein contained, Sublandlord hereby leases to Port and Port hereby leases from Sublandlord that certain space comprising approximately 52,475 total rentable square feet as shown on Exhibit A attached hereto ("Premises"), located in the building ("Building") known as Pier 1, San Francisco, California. For purposes hereof, the total rentable square feet is comprised of 45,630 usable square feet located within the Premises, plus a fifteen percent (15%) load factor for tenant service areas and common areas of the Building, portions of which are located within the Premises. The land, Building and any other improvements at Pier 1, San Francisco, California, as shown on Exhibit A are referred to herein as the "Property." The parties reserve the right, upon mutual agreement of the Port's Executive Director and Sublandlord, to enter into one or more memoranda of technical corrections hereto to reflect any non-material changes in the legal description and square footages of the Premises occurring during or after the development of the Premises or the Property, including changes required to reflect actual rentable square footages, and upon full execution thereof, such memoranda shall be deemed to become a part of this Sublease.

B. **Common Areas.** Port shall have the non-exclusive right to use, together with other tenants in the Building, the lobbies, corridors, elevators, stairways and other public access areas of the Building and the Property if any, (collectively, the "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Building and the Property.

C. Term. The Premises are leased for a term (the "Term") commencing on the date (the "Commencement Date") which is two (2) days following the date that the leasehold improvements to be performed by Sublandlord pursuant to the Work Letter ("Work Letter") (attached hereto as Exhibit B) (the "Leasehold Improvements") are substantially completed and delivered to the Port pursuant thereto, subject to paragraph V(e) of the Work Letter, or upon such earlier date that the Port takes occupancy of all or any part of the Premises and opens for business to the public. The expiration date for the term of this Sublease ("Expiration Date") shall be the same as the expiration date of the term of the Master Lease, unless sooner terminated as provided herein. Promptly after the occurrence of the Commencement Date, Port and Sublandlord shall execute a Memorandum of Commencement Date and Amendment of Basic Sublease Information substantially in the form of Exhibit C attached hereto, confirming the actual Commencement Date and Expiration Date hereof and the other items set forth therein, but either party's failure to do so shall not affect the commencement or expiration of the Term.

D. Delay in Delivery of Possession. Sublandlord shall use its reasonable efforts to deliver possession of the Premises to Port with all of the Leasehold Improvements substantially completed and accepted by Port pursuant to the Work Letter on or before December 1, 2000 (the "Estimated Commencement Date"). However, if Sublandlord so fails for a ninety (90) day initial grace period beyond the Estimated Commencement Date, or such additional time as may be necessary due to Force Majeure occurrences (as defined in Article 31.E) (and such failure is not due to Port Delay, as that term is defined in the Work Letter), Port shall have the right to terminate this Sublease and the Master Lease by written notice to Sublandlord any time thereafter up until Sublandlord substantially completes the Leasehold Improvements as required in Exhibit B and delivers the Premises to Port. Any such delay in the Commencement Date shall not subject Sublandlord to liability for loss or damage resulting therefrom, and Port's sole recourse with respect thereto shall be the abatement of Rent and right to terminate this Sublease and the Master Lease without any further liability. Notwithstanding the foregoing, Port shall not have the right to terminate this Sublease under this Article 1.D. unless Port exercises its right to terminate the Master Lease pursuant to Article 23 thereof and its right to terminate the Development Agreement pursuant to Article 11 thereof for failure of Sublandlord to complete the Leasehold Improvements by the required date. Upon any such termination, Sublandlord and Port shall be entirely relieved of their obligations hereunder, and Rent payments shall be returned to Port. If the Commencement Date is delayed beyond the Estimated Commencement Date, the Expiration Date shall not be similarly extended. Sublandlord shall permit early entry by Port to prepare the Premises for Port's occupancy, provided the Premises are legally available and such entry by Port does not unreasonably interfere with Sublandlord's work required under Exhibit B hereto. During any period that Port shall be permitted to enter the Premises prior to the Commencement Date other than to occupy the same and open for business to the

public, Port shall comply with all terms and provisions of this Sublease, except those provisions requiring the payment of Base Rent and Port's Pro Rata Share of Taxes and Operating Expenses.

ARTICLE 2 RENT

A. **Base Rent.** Beginning on the Commencement Date, Port shall pay Sublandlord monthly Base Rent in the amount set forth in the Basic Sublease Information in advance on or before the first day of each calendar month during the Term. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. If the parties agree upon a change to the rentable square footage of the Premises pursuant to Article 1.A., then the monthly Base Rent shall be adjusted accordingly.

B. **Ten Year Base Rent Adjustment to Fair Market Value.** On each of the tenth (10th), twentieth (20th), thirtieth (30th) and fortieth (40th) anniversaries of the Commencement Date (each, an "Adjustment Date"), the Base Rent hereunder shall be adjusted upwards or downwards to equal the then Fair Market Value of the Premises. The Fair Market Value shall be based upon the rental rate for leases then being entered into for comparable space in a comparable location in San Francisco. Fair Market Value will be determined as follows:

1. Sublandlord shall determine the Fair Market Value by using its good faith judgment based upon comparable office space in a comparable location in San Francisco, and Sublandlord shall submit to Port its determination of Fair Market Value no more than one hundred eighty (180) days or less than ninety (90) days prior to each Adjustment Date. Sublandlord's determination of Fair Market Value also shall include a determination of the type, amount and frequency of built-in escalators to Base Rent (e.g., Consumer Price Index increases or periodic percentage increases for the applicable Adjustment Period based on comparable leases for comparable office space in a comparable location in San Francisco ("Interim Increases")). For purposes hereof, "Fair Market Value" shall include the rental rate and Interim Increases for Base Rent. In the event Sublandlord and Port are unable to mutually agree on the Fair Market Value within thirty (30) days after delivery of the Sublandlord's notice to Port of its determination, the Fair Market Value of the Premises shall be set by appraisal, as provided below. Notwithstanding anything to the contrary herein, in no event will the Base Rent so determined for the initial Premises (but not for any Expansion Space which may be leased by Port pursuant to Article 4) be less than Thirty-Five Dollars (\$35.00) per rentable square foot per year.

2. Within forty-five (45) days after the expiration of the thirty (30) day period specified above, each party, at its cost and by giving notice to the other party, shall appoint a real estate appraiser holding an M.A.I. designation with at least ten (10) years full-time commercial property appraisal experience appraising comparable space in the City of San Francisco to prepare an appraisal of the Fair Market Value for the ten (10) year period (the "Adjustment Period") succeeding the applicable Adjustment Date, provided that each party shall use diligent efforts to appoint such appraiser more quickly than said forty-five (45) days. If a party does not appoint an appraiser within such forty-five (45) day period, the single appraiser appointed shall be the sole appraiser and shall prepare an appraisal of the Fair Market Value of the Premises for the Adjustment Period. Each appraiser shall conduct and submit to the party who retained him or her an independent appraisal within thirty (30) days after appointment. If the parties are unable to agree on the Fair Market Value for the Adjustment Period within thirty (30) days after receiving the appraisal(s), each appraiser shall notify the other in writing of its final appraisal for purposes of determination of Fair Market Value in accordance herewith and the parties shall attempt to elect a third appraiser meeting the qualifications stated in this paragraph. If they are unable to agree on the third appraiser, either party, by giving ten (10) days' notice to the other party, may file a petition with the American Arbitration Association solely for the purpose of selecting a third appraiser who meets the qualifications stated in this paragraph. If a party suggests the name of a third appraiser to the arbitration service, the party also shall submit a declaration by the proposed third appraiser disclosing any work performed by such appraiser for either party, any entity related to either party, or their attorneys, principals or officers, and any relationship between the third appraiser and either party that could reasonably be construed as a conflict of interest. The parties hereby waive any right to challenge the selection of the third appraiser, whether by the agreement of the first two arbitrators, or by the arbitration service, for any reason other than fraud, corruption or undue influence, and the parties expressly waive any right to challenge the third appraiser based upon a conflict of interest by reason of work the third appraiser has performed for either party, any entity related to either party, or their respective attorneys, principals or officers, and any relationship between the third appraiser and either party that could reasonably be construed as a conflict of interest. Notwithstanding the foregoing, neither party waives any challenge for a conflict of interest based on work performed by the third appraiser for either party, any entity related to either party, or their respective attorneys, principals or officers, and any relationship between the third appraiser and either party that could be construed as a conflict of interest, if the third appraiser fails to disclose such work to both parties in the declaration. Each party shall bear one-half (½) of the cost of any fee charged by the American Arbitration Association for appointing the third appraiser and one-half (½) of the third appraiser's fee.

3. Within thirty (30) days after selection of the third appraiser, the third appraiser shall determine the Fair Market Value by selecting one or the other of

the final appraisals established by the initial appraisers pursuant to subsection 2 above. The determination of the Fair Market Value by appraisal conducted in accordance herewith shall be conclusive, final and binding on the parties, except as provided in California Code of Civil Procedure Section 1286.2 (a), and (b) (as the same may be amended from time to time). Except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time), the provisions of Title 9 of the California Code of Civil Procedure shall not have any application to the appraisal procedure set forth herein.

Upon determination of Fair Market Value and adjustment of the Base Rent for the Adjustment Period, the parties shall execute an addendum to this Sublease stating the adjusted Base Rent, and such adjusted Base Rent shall be retroactive to the first day of the applicable Adjustment Period. If the Base Rent is adjusted upwards, then within thirty (30) days after such determination, Port shall pay to Sublandlord the difference between the Base Rent for the previous Adjustment Period and the new adjusted Base Rent from the first day of the applicable Adjustment Period to such date, together with the current monthly Base Rent then due. If the Base Rent is adjusted downwards, then on the first day of the calendar month after such determination, Sublandlord shall refund to Port the difference between the Base Rent for the previous Adjustment Period and the Base Rent paid by Port from the first day of the applicable Adjustment Period to such date.

C. Rent and Other Charges. Base Rent, Port's Pro Rata Share of Taxes and Operating Expenses (defined in Article 3 below) and any other amounts which Port is or becomes obligated to pay Sublandlord under this Sublease or other agreement entered in connection herewith, are sometimes herein referred to collectively as "Rent." Rent shall be paid in the lawful currency of the United States of America to Sublandlord, at Sublandlord's address for notices set forth in the Basic Sublease Information, or at such other place as Sublandlord may designate. Rent shall be paid without any prior demand or notice therefor (except as expressly provided herein) and, except as expressly provided in Article 2.D below), shall be paid without any deduction, set-off or counterclaim.

D. Rent Offset for Master Lease Rent. The parties acknowledge that Sublandlord is responsible to pay Port Minimum Rent and Participation Rent under the terms of the Master Lease (collectively, the "Master Lease Rent"), and that Port is responsible to pay Base Rent and Port's Pro Rata Share of Operating Expenses and Taxes to Sublandlord under the terms of this Sublease. Commencing on the Commencement Date hereof, and thereafter on or before the first day of each and every calendar month during the Term, Port shall be entitled to offset against its monthly payment of Base Rent hereunder the Master Lease Rent due to Port from Sublandlord for that month. In addition, the Master Lease entitles Sublandlord to offset against the Master Lease Rent due thereunder for that month the amount of Base

Rent due under the Sublease. Consequently, to the extent that Base Rent hereunder for any given month exceeds the amount of Master Lease Rent due for that month, then the Master Lease Rent shall be \$0.00 and the Base Rent hereunder shall consist of the difference between the sum of Master Lease Rent and the Base Rent for that month. To the extent that Base Rent hereunder for any given month is less than the amount of Master Lease Rent for that month, then Base Rent shall be \$0.00, and Sublandlord's payment of Master Lease Rent under the Master Lease shall consist of the difference between the Master Lease Rent and Base Rent due hereunder.

The following are examples of the foregoing concept:

Example 1 (Master Lease Rent Exceeds Base Rent)

Minimum Rent and Participation Rent monthly payment due from Sublandlord under the Master Lease:	\$100,000.00
Monthly Base Rent due from Port under this Sublease:	\$ 80,000.00
Net Master Lease Rent:	\$ 20,000.00
Net Base Rent:	\$0.00

Example 2 (Base Rent Exceeds Master Lease Rent)

Minimum Rent and Participation Rent monthly payment due from Sublandlord under the Master Lease:	\$100,000.00
Monthly Base Rent due from Port under this Sublease:	\$120,000.00
Net Master Lease Rent:	\$0.00
Net Base Rent:	\$ 20,000.00

E. Late Charges.

1. Interest on Delinquent Rent. If any installment of Base Rent or Port's Pro Rata Share of Operating Expenses and Taxes is not paid within ten (10) days following the date it is due, or if any additional charges are not paid within thirty (30) business days following written demand for payment of such additional charges, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "Default Rate") equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the Commencement Date hereof, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be

payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Port.

2. Late Charges. Port acknowledges and agrees that late payment by Port to Sublandlord of Rent will cause Sublandlord increased costs not contemplated by this Sublease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of Sublandlord's rights or remedies hereunder, Port shall pay a late charge equal to One Hundred Fifty Dollars (\$150.00), which charge shall be Indexed annually, plus reasonable Attorneys' Fees and Costs incurred by Sublandlord by reason of Port's failure to pay any Rent within ten (10) days after the due date of such Rent. Such late charge may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. The Parties agree that such late charge represents a fair and reasonable estimate of the cost which Sublandlord will incur by reason of a late payment by Port.

ARTICLE 3
PORT'S PRO RATA SHARE OF TAXES
AND OPERATING EXPENSES

A. Taxes.

1. Definitions. Except as set forth in Article 3.A.2 below, Port shall pay Sublandlord an amount equal to Port's Pro Rata Share (as specified in the Basic Sublease Information) of Taxes with respect to the Property at the times and in the manner specified herein. The term "Taxes" shall mean all taxes, assessments and charges levied upon or with respect to the Property leased by Sublandlord under the Master Lease or any personal property of Sublandlord used in the operation thereof, or Sublandlord's interest in the Property or such personal property. Taxes shall include, without limitation, all general real property taxes, possessory interest taxes, and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental occupants thereof, service payments in lieu of taxes, and any tax, fee, or excise on the act of entering into this Sublease or any other lease of space in the Building or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Building, that are now or hereafter levied or assessed against Sublandlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the parties on the date of this Sublease. Tax refunds shall be deducted from Taxes in the year they are received by Sublandlord, but if such refund

shall relate to Taxes paid in a prior year of the Term, and the Sublease shall have expired, Sublandlord shall mail Port's Pro Rata Share of such net refund (after deducting expenses and attorneys' fees and up to the amount Port paid towards Taxes during such year), to Port's last known address.

If Taxes for any period during the Term shall be increased after payment thereof by Sublandlord, for any reason, including without limitation error or reassessment by applicable governmental or municipal authorities, Port shall pay Sublandlord Port's Pro Rata Share of such increased Taxes. Port shall pay Port's Pro Rata Share of Taxes whether Taxes are increased as a result of increases in the assessment or valuation of the Property (whether based on a sale, change in ownership or refinancing of the Property or otherwise), increases in the Tax rates, reduction or elimination of any rollbacks or other deductions available under current law, scheduled reductions of any Tax abatement, or the elimination, invalidity or withdrawal of any Tax abatement, or for any cause whatsoever. Notwithstanding the foregoing, if any Taxes shall be paid based on assessments or bills by a governmental or municipal authority using a fiscal year other than a calendar year, Sublandlord may elect to average assessments or bills for the subject calendar year, based on the number of months of such calendar year included in each such assessment bill.

Notwithstanding the foregoing, Taxes shall exclude (1) franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Sublandlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Sublandlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to Port's failure to pay its portion of Taxes hereunder, (3) any personal property taxes payable by Port hereunder or by any other tenant or occupant of the Building; or (4) possessory interest taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of any portion of the Property other than the Premises in accordance with Article 3.A.2 hereof.

"Tax Year" means Port's fiscal year (which is currently July 1 through June 30) during the Term, including any partial year during which the Sublease may commence; provided, however, that any change to a Tax Year shall require at least twelve (12) months' advance written notice by Port to Sublandlord of any change in Port's fiscal year.

2. Possessory Interest Taxes. Under the Master Lease, Sublandlord, as the tenant thereunder, is subject to pay, or cause to be paid, any and all possessory interest taxes levied upon Sublandlord's interest under the Master Lease. However, the parties also acknowledge that the Premises occupied by Port under this Sublease falls

within the meaning of Cal. Rev. & Tax Code §107.8(a) and is therefore exempt from possessory interest tax. Cal. Rev. & Tax Code §107.8(a) provides that in evaluating the presence of independent possession necessary to establish a possessory interest under Rev. & Tax Code Section 107(a), . . . the possession of, claim to, or right to the possession of, land or improvements pursuant to a lease is not independent if the lessee (1) is obligated simultaneously to sublease the property to the public owner of the property for all or substantially all of the lease period, (2) may not exercise authority and exert control over the management or operation of the property separate and apart from the policies, statutes, ordinances, rules and regulations of the public owner, (3) provides as part of the sublease that the public owner has the right to repurchase all of the lessee's rights in the lease, and (4) cannot receive rent or other amounts from the public owner under the sublease (including any amounts due with respect to any repurchase) the present value of which, at the time the lease is entered into, exceeds the present value of the rent or other amounts payable by the lessee under the lease.

This four part test is met under the terms of the Master Lease and this Sublease as follows: (1) the approximately 50 year term of this Sublease is coterminous with the Master Lease; (2) this Sublease does not allow the Sublandlord to exert any management or control over the Premises other than the Rules and Regulations referred to in Article 6.E and certain other property controls primarily derived from Port's requirements set forth in the Master Lease; (3) Port has the option to repurchase all of Sublandlord's rights in the Premises at any time during the Term, pursuant to Article 5 hereof; and (4) Sublandlord's Base Rent to Port attributable to the Port Sublease premises under Section 2 of the Master Lease is \$35.00 per sq. foot per year, with an 18.5% increase in the 6th year, and with a market rate adjustment every 10 years. This amount is equal to the Base Rent attributable to the Premises hereunder, which is based on \$35.00 per sq. foot per year, with an 18.5% increase in the 6th year, and with a market rate adjustment every 10 years.

To the extent that the Premises is exempted from possessory interest taxes or any other applicable taxes by reason of Port's status as a tax-exempt entity, and Sublandlord is levied or assessed a possessory interest tax or other tax that the Port is exempt from on any portion of the Property other than the Premises, such taxes shall be exempted from the definition of "Taxes" hereunder, and Port shall have no obligation to pay all or any portion thereof.

Notwithstanding anything to the contrary herein, in the event possessory interest or other taxes are levied upon or with respect to the Property including all or any portion of the Premises, then Port shall pay its Pro Rata share of such Taxes in accordance with this Article 3.A to the extent such Taxes are attributable to the Premises, and this Sublease shall remain in full force and effect.

B. Operating Expenses. Port shall pay Sublandlord an amount equal to Port's Pro Rata Share (as specified in the Basic Sublease Information) of Operating Expenses incurred by Sublandlord with respect to the Property at the times and in the manner set forth below. Port's Pro Rata Share is the quotient of the rentable area of the Premises divided by the total rentable area of the Building. Port's Pro Rata Share is subject to adjustment in the event of reduction or increase in the rentable area within the Premises and/or the Building in accordance with the formula set forth in Article 1.A. after construction of Port's Leasehold Improvements. As used herein, the term "Fiscal Year" means each Port fiscal year (which currently is July 1 through June 30) during the Term, including any partial year during which the Sublease may commence; provided, however, that any change to a Fiscal Year shall not be effective except upon at least twelve (12) months' advance written notice from Port to Sublandlord of any change in Port's fiscal year. The term "Operating Expenses" shall mean: all expenses, costs and amounts (other than Taxes), as determined by accepted principles of sound accounting practices, which Sublandlord shall pay during any Fiscal Year any portion of which occurs during the Term, because of or in connection with the ownership, management, repair, maintenance, or operation of the Property, including, without limitations, any amounts paid for: (i) utilities for the Building, including, but not limited to, electricity, gas, water, sewer, heating, air conditioning and ventilation; (ii) insurance premiums for insurance on or with respect to the Property; (iii) accounting, legal, and consulting fees; (iv) a management fee not to exceed the market rate management fees charged for similarly sized, comparable office buildings in San Francisco with a similar number of tenants (including the fair rental value of any office space provided solely for management of the Building, up to customary and reasonable amounts); (v) wages, salaries and other compensation and benefits (as well as employer's taxes levied on such compensation and benefits, unemployment insurance and all other direct payroll costs) for person(s) directly engaged in the day-to-day operation of the Building; (vi) permits, licenses, and certificates necessary to manage and operate the Building; (vii) supplies, tools, materials, equipment, and equipment rentals used in the operation, repair, and maintenance of the Property, the Building Structure, Building Systems (as defined in Article 9.B), and Common Areas; (viii) charges of independent contractors and/or wages, salaries and other compensation and benefits (as well as employer's taxes levied on such compensation and benefits, unemployment insurance and all other direct payroll costs) for the operation, repair and maintenance of the Property, the Building Structures, Building Systems, and Common Areas; and (ix) services to the Premises provided by Sublandlord which are equivalent in character and scope to those services provided to other sub-tenants occupying the Building.

Notwithstanding the foregoing, Operating Expenses shall not include the following:

(i) capital expenditures, except those: (a) made primarily to reduce Operating Expenses, or to comply with any legal or other governmental requirements other than the requirements necessary to issuance of the building permits for the initial Leasehold Improvements made to the Building by Sublandlord pursuant to the Master Lease; or (b) for replacements (as opposed to additions or new improvements) of non-structural items located in the Common Areas of the Property required to keep such areas in good condition; provided, all such permitted capital expenditures (together with reasonable financing charges) shall be amortized for purposes of this Sublease over the shorter of: their useful lives, or the period during which the reasonably estimated savings in Operating Expenses equals the expenditures;

(ii) Any rent and other charges paid by Sublandlord to Port under the Master Lease or under any other underlying lease;

(iii) Rentals for items (except when needed in connection with normal repairs and maintenance of the Building Structure, Building Systems, or Common Areas) which if purchased rather than rented, would constitute a capital expenditure specifically excluded in item (i) above (excluding, however, equipment not affixed to the Building which is used in providing janitorial or similar services);

(iv) Costs incurred by Sublandlord for the repair of damage to the Building, to the extent that such costs are covered by insurance that Sublandlord is required to carry under Section 18 of the Master Lease or any other insurance actually carried by Sublandlord;

(v) Costs occasioned by the exercise of the right of eminent domain;

(vi) Costs, including, without limitation, permit, license and inspection and supervision costs, incurred with respect to the installation of improvements made for other tenants or occupants of the Building or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for other tenants or occupants in the Building;

(vii) Depreciation;

(viii) Advertising and promotional costs, leasing commissions, attorneys' fees, space planning costs and all other costs and expenses incurred in connection with negotiations with present or prospective tenants or other occupants in the Building or any present or future ground lessors or holders of any mortgages or other encumbrances affecting any of the Building or the

defense of Sublandlord's title to the Building or the real property on which it is located;

(ix) Expenses in connection with services or other benefits which are not provided to Port, but which are provided to another tenant or occupant of the Building, or for which Port is charged directly by the provider;

(x) Costs incurred by Sublandlord due to violation by any other tenant or occupant of the Building of applicable laws, rules or regulations, the terms and conditions of any lease, ground lease, mortgage or deed of trust, or other covenants, conditions or restrictions encumbering the Building, to the extent such costs are recovered by Sublandlord from such other tenant or occupant of the Building;

(xi) Overhead and profit increments paid to Sublandlord or to subsidiaries or affiliates of Sublandlord for management, other services, supplies or materials, to the extent the same exceed the market rate costs of such goods and/or services which would be charged by unaffiliated third parties on a competitive, arms-length basis;

(xii) Interest, principal, points and fees or debt amortization on debt secured by any mortgage, deed of trust or any other debt instrument;

(xiii) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Sublandlord and/or fees paid with respect to any off-site parking operation;

(xiv) Except for keeping Building systems in operation while repairs are being made, rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, excluding equipment not affixed to the Building which is used in providing janitorial or similar services;

(xv) All items and services for which Port or any other tenant or occupant of the Building separately reimburses Sublandlord (other than through such tenant's or occupant's proportionate share of Operating Expenses), or which Sublandlord provides selectively to one or more other tenants or occupants without reimbursement, or which are not provided in reasonable proportion to the space leased by Port but which Sublandlord provides to another tenant or other occupant of the Building;

(xvi) Advertising or promotional expenditures, and the costs of acquiring and installing signs in or on any of the Building identifying the owner

of the Building or any other tenant or occupant of the Building (other than the Building directory);

(xvii) Costs of electric power or other utilities for which any tenant or occupant directly contracts with the utility provider;

(xviii) Tax penalties incurred as a result of Sublandlord's negligence, inability or unwillingness to make payments when due (other than due to the failure by Port to pay its Pro Rata Share);

(xix) Costs arising from the presence of Hazardous Material in or about the Building including, without limitation, groundwater or soil conditions, except if such Hazardous Material is brought on to the Building by Port in violation of applicable laws;

(xx) Sublandlord's charitable or political contributions;

(xxi) Capital costs for sculpture, paintings or other objects of art;

(xxii) Costs (including, without limitation, all attorneys' fees and costs of settlement, judgments and payments in lieu thereof) arising from claims, disputes or potential disputes with tenants of the Building in connection with potential or actual claims, litigation or arbitrations pertaining to Sublandlord, the Building, or Property;

(xxiii) Sublandlord's general corporate overhead and general and administrative expenses not directly related to the operation or management of the Building or any rental charge for space located in the Building used by Sublandlord or affiliates of Sublandlord other than space used solely as a Building management office;

(xxiv) Any training, entertainment, dining, automobile or travel expenses of Sublandlord for any purpose other than directly in connection with operation of the Building;

(xxv) Expenses for which Sublandlord has been compensated by a management fee;

(xxvi) Any "in-house" legal or accounting fees and any other costs associated with operation of the business of Sublandlord, as distinguished from the costs of operating the Property;

(xxvii) Any other expenses which, in accordance with generally accepted accounting principles would not normally be treated as Operating Expenses by landlords in comparable office buildings in San Francisco; and

(xxviii) Costs of above-standard utilities provided to other subtenants, including, without limitation, retail or restaurant operations in The Building.

C. **Manner of Payment.** Port's Pro Rata Share of Taxes and Operating Expenses shall be paid in the following manner:

(i) Prior to January 1st of each year of the Term, Sublandlord shall estimate the amount Port shall owe for Port's Pro Rata Share of Taxes and Operating Expenses for the succeeding full or partial Fiscal Year. Port shall pay one-twelfth (1/12) of the estimated amounts, on a monthly basis, on or before the first day of each calendar month, together with Port's payment of Base Rent. Such estimate may be reasonably adjusted from time to time by Sublandlord.

(ii) Within one hundred twenty (120) days after the end of each Fiscal Year (ending June 30th), or as soon thereafter as practicable, Sublandlord shall furnish Port with a statement (the "Statement"), prepared by a certified public accountant, showing: (a) the amount of actual Taxes and Operating Expenses for such Fiscal Year, with a listing of amounts for major categories of Operating Expenses, (b) any amount paid by Port towards Taxes and Operating Expenses during such Fiscal Year on an estimated basis, and (c) any revised estimate of Port's obligations for Taxes and Operating Expenses for the current Fiscal Year.

(iii) If the Statement shows that Port's estimated payments were less than Port's actual obligations for Taxes and Operating Expenses, Port shall pay the difference. If the Statement shows an increase in Port's estimated payments for the current Fiscal Year, Port shall pay the difference between the new and former estimates, for the period from July 1 of the current Fiscal Year through the month in which the Statement is sent. Port shall make such payments within thirty (30) days after Sublandlord sends the Statement; provided, however, Port shall have the right to defer said payments until July 1st of the next Fiscal Year but must pay interest at an annual rate equal to the then current reference rate published by Bank of America N.T.&S.A. at its San Francisco main office (or such other major lending institution as shall be mutually agreed by Sublandlord and Port) plus two percent (2%) on the deferred amount.

(iv) If the Statement shows that Port's estimated payments exceeded Port's actual obligations for Taxes and Operating Expenses, Port shall receive a credit for the difference against payments of Rent next due. If the Term shall have expired and no further Rent shall be due, Port shall receive a refund of such difference within thirty (30) days after Sublandlord sends the Statement.

(v) No delay by Sublandlord in providing the Statement (or separate statements) shall be deemed a default by Sublandlord or a waiver of Sublandlord's right to require payment of Port's obligations for actual or estimated Taxes or Operating Expenses.

D. Proration. If the Term commences other than on the first day of a Fiscal Year, or ends other than on the last day of a Fiscal Year, Port's obligations to pay estimated and actual amounts towards Port's Pro Rata Share of Taxes and Operating Expenses for such first or final Fiscal Years shall be prorated to reflect the portion of such Fiscal Years included in the Term. Such proration shall be made by multiplying the total estimated or actual (as the case may be) Taxes and Operating Expenses for such Fiscal Years by a fraction, the numerator of which shall be the number of days of the Term during such Fiscal Year, and the denominator of which shall be 365.

E. Sublandlord's Records. Sublandlord shall maintain records respecting Taxes and Operating Expenses and determine the same in accordance with sound accounting and management practices, consistently applied. Port or its representative shall have the right to examine such records upon reasonable prior notice specifying the records Port desires to examine, during normal business hours at the place or places where such records are normally kept by sending such notice no later than forty-five (45) days following the furnishing of the Statement. Port may take exception to matters included in Taxes or Operating Expenses, or Sublandlord's computation of Port's Pro Rata Share of either, by sending notice specifying such exception and the reasons therefor to Sublandlord no later than thirty (30) days after Sublandlord makes such records available for examination. Such Statement shall be considered final, except as to matters to which exception is taken after examination of Sublandlord's records in the foregoing manner and within the foregoing times. Port acknowledges that Sublandlord's ability to budget and incur expenses depends on the finality of such Statement, and accordingly agrees that time is of the essence of this paragraph. If Port takes exception to any matter contained in the Statement as provided herein, Sublandlord shall refer the matter to an independent certified public accountant, whose certification as to the proper amount shall be final and conclusive as between Sublandlord and Port. Port shall promptly pay the cost of such certification unless such certification determines that Port was overbilled by more than five percent (5%). Pending resolution of any such exceptions in the foregoing manner, Port shall continue paying Port's Pro Rata Share of Taxes and Operating Expenses in the

amounts determined by Sublandlord, subject to adjustment after any such exceptions are so resolved.

ARTICLE 4 EXPANSION RIGHTS

On the 10th anniversary of the Commencement Date, and at each 10 year anniversary thereafter for the Term hereof (each, an "Expansion Period"), Port shall have the right (the "Expansion Option") to lease the space contiguous to the Premises comprising, in the aggregate, approximately 30,000 rentable square feet (prior to subtraction for Building core area) as shown on Exhibit A-1 hereto (the "Expansion Space") on the terms and conditions set forth below. For each Expansion Period Port may exercise the Expansion Option in increments of either one or two bays contiguous to the Premises then occupied by Port. Such "bays" are delineated on Exhibit A-1 hereto, and each comprises approximately 6,000 rentable square feet without subtraction for Building core area. Port acknowledges that the final location of the Building core area(s) has not been determined, but may be within the Expansion Space. Port shall exercise the Expansion Option, if at all, by giving written notice to Sublandlord specifying whether Port intends to lease one or two contiguous bays (the "Expansion Notice") not later than one year prior to the expiration of each Expansion Period, provided that no Event of Default on the part of Port then exists and is continuing. If Port fails (or is unable due to an Event of Default) to timely exercise the Expansion Option, such right shall terminate until the following Expansion Period. If Port exercises the Expansion Option the following provisions shall apply:

1. Port's sublease of the Expansion Space shall be for the balance of the Sublease term and shall be on all of the same terms and conditions applicable to the Premises hereunder, except for Base Rent, Port's Pro-Rata Share and the terms of the Work Letter.
2. Port shall accept the Expansion Space in its "as is" condition, and any tenant improvements or alterations necessary for Port's occupancy thereof shall be constructed at Port's sole expense in accordance with the provisions of Article 10.
3. The Base Rent for the Expansion Space identified in the relevant Expansion Notice shall be based on the Fair Market Value thereof, as determined in accordance with Article 2.B hereof.

If the determination of Fair Market Value is delayed beyond the commencement of the term for the Expansion Space, Port shall pay monthly rent for such Expansion Space at the same rate per month as then payable for the balance of the Premises until the first day of the month following the determination of Fair

Market Rental Value, whereupon the adjustment provided for shall be made as of the Expansion Commencement Date (defined below). On the first day of the first calendar month after such determination, Port shall pay to Sublandlord the difference between the Fair Market Value for the Expansion Space and the Base Rent actually paid by Port therefor, for the period from the Expansion Commencement Date to such payment date, together with the current monthly Base Rent then due.

4. Sublandlord shall deliver the Expansion Space to Port on a date determined by Sublandlord which shall be not sooner than six (6) months prior to or six (6) months after the commencement of the applicable Expansion Period (the "Expansion Commencement Date").

ARTICLE 5 RIGHT TO REPURCHASE SUBLEASEHOLD INTEREST

A. Port's Purchase Option. Sublandlord hereby grants to Port an exclusive and irrevocable option to purchase (the "Purchase Option") that portion of Sublandlord's leasehold estate held by Sublandlord under the Master Lease attributable to the Premises under this Sublease, exclusive of any rentable square feet located outside of the Premises (the "Subleasehold Estate") for the price (the "Purchase Price") and upon the terms and conditions specified herein. Port may exercise the Purchase Option at any time during the Term (the "Option Term") by giving Sublandlord three-hundred sixty-five (365) days notice ("Port's Notice") of its intent to exercise the Purchase Option, including a statement of the Purchase Price. Port's purchase of the Subleasehold Estate pursuant to the Purchase Option shall be subject to approval by the Port Commission, the City's Board of Supervisors and Mayor, in their respective sole discretion, and due enactment of legislation authorizing such purchase and appropriation of all necessary funds in accordance with all applicable laws (including CEQA), all within one hundred twenty (120) days after such exercise. Upon obtaining such approvals, Port shall so notify Sublandlord and Port shall be obligated to purchase from Sublandlord and Sublandlord shall be obligated to sell and convey to Port, the Subleasehold Estate for the purchase price and on the terms and conditions set forth hereinbelow.

B. Purchase Price. The Purchase Price for the Subleasehold Estate shall be the present value as of the Closing (as defined in Article 5.C below) of all Base Rent due from Port to Sublandlord hereunder, without any setoffs or credits, from the Closing through the Expiration Date. If Sublandlord disagrees with the Purchase Price set forth in Port's Notice, then the parties shall attempt to agree on the Purchase Price within thirty (30) days after the date of Port's Notice. If the parties are unable to agree on the Purchase Price within such 30-day period, then the Purchase Price shall be

submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

C. **Closing.** The purchase and sale of the Subleasehold Estate contemplated by this Article (the "Closing") shall close on or before the date that is three-hundred sixty-five (365) days from the date of Port's Notice of its intent to exercise the Purchase Option (the "Closing Date") and shall be conducted through an escrow opened by Port with a Title Company qualified to do business in the State of California with an office located in the City and County of San Francisco as Port may select. Prior to the Closing Date, Sublandlord and Port each shall deposit in escrow with the title company all documents and funds necessary to close the purchase and sale, together with escrow instructions consistent herewith. All closing costs, including without limitation, escrow and recording fees, title insurance premiums and any transfer tax shall be paid by Port. Sublandlord shall convey to Port by quitclaim deed all of Sublandlord's right, title and interest in the Subleasehold Estate, subject only to the following (collectively, the "Purchase Option Permitted Exceptions"): (i) a lien for real property taxes and assessments not yet due and payable for the tax fiscal year in which the Closing Date occurs, and (ii) any other easements or title exceptions (excluding any mortgages or other financing encumbrances): (1) existing as of the effective date of the Master Lease (2) land use restrictions, entitlements or other governmental requirements arising in connection with Sublandlord's development of the Property as contemplated or permitted by the Development Agreement or the Master Lease, or (3) created or suffered by Port or consented to in writing by Port or granted by Sublandlord solely at Port's written request. Sublandlord shall be responsible for removing any unpermitted title exceptions voluntarily caused by Sublandlord at Sublandlord's sole expense, prior to the Closing Date. Sublandlord shall not be obligated to remove any unpermitted title exceptions not caused by Sublandlord. Upon Closing, Port's interest in the Subleasehold Estate as fee title holder and as sublessee hereunder shall merge.

D. Prior to and as a condition of Closing, Port shall, at Port's expense, take all action necessary to cause the portion of Sublandlord's leasehold estate under the Master Lease which remains after the transfer of the Subleasehold Estate to Port hereunder (the "Remainder Parcel") to comply with the Subdivision Map Act such that the Remainder Parcel is a legally subdivided parcel and therefore transferable by Sublandlord to any third party without the need for further compliance with the Subdivision Map Act.

E. Port shall accept the Subleasehold Estate in its "as is" condition, without representation or warranty of any kind by Sublandlord.

F. Prior to and as a condition of Closing, Port and Sublandlord shall enter into mutually acceptable agreements (i) regarding maintenance of the roof, Building

exterior, Building Structure and Building Systems included in the Subleasehold Estate, which maintenance shall be at Port's sole expense; (ii) imposing on the Subleasehold Estate the same limitations on use, alterations and improvements to be effective after Closing as are applicable during the term of the Sublease hereunder; and (iii) creating such reciprocal easements and agreements as may be necessary for the continued operation of the Building and access to Common Areas and tenant space.

ARTICLE 6 USE AND RULES

A. Use. Port shall use the Premises for the purpose set forth in the Basic Sublease Information and for no other use without the prior written consent of Sublandlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Sublandlord hereby consents to the sale by Port of Port and City of San Francisco merchandise in the Premises so long as such sales are ancillary only to Port's primary use of the Premises. Port shall use the Premises in compliance with all applicable laws, and without disturbing or interfering with any other tenant or occupant of the Property. Port shall not use the Premises in any manner so as to cause a cancellation of Sublandlord's insurance policies, or an increase in the premiums thereunder, or to cause Sublandlord to be in violation of the Master Lease or the Public Trust (as that term is defined in the Master Lease).

B. Changes by Sublandlord. Subject to the provisions of the Master Lease, and the permit issued by the Bay Conservation Development Commission, Sublandlord shall have the right at any time and from time to time to change any part of the Building, to dedicate portions of the Property for governmental purposes and to convey Sublandlord's interest in portions to others, so long as such changes do not materially adversely affect Port's access to and quiet enjoyment of the Premises. Sublandlord shall not be subject to liability nor shall Port be entitled to compensation or diminution or abatement of Rent because of such changes. Sublandlord shall use reasonable efforts not to interfere unreasonably with the normal business operations of Port, but Sublandlord shall not be liable to Port for interference or inconvenience caused by any action of Sublandlord under the provisions of this paragraph.

C. Manner of Use. Port shall be open for business during the entire Term of this Sublease, provided that Port shall be entitled to occasional temporary interruptions of Port's business in the Premises to accommodate City or Port operational requirements, so long as such interruptions do not exceed thirty (30) consecutive days and are infrequent. Port shall conduct its business in a first class and reputable manner. Port shall furnish, install and maintain in the Premises all equipment and facilities properly necessary for Port's permitted use of the Premises. Sublandlord makes no representation that Port's proposed permitted use of the

Premises will comply with applicable laws. Port, at its sole cost and expense, shall comply with all applicable laws relating to, or affecting the condition, use or occupancy of the Premises, and with the requirements of Sublandlord's insurance underwriters, applicable fire rating bureaus or similar bodies now or hereafter in effect pertaining to the Premises or Port's use or occupancy of the Premises or the acts or omissions of Port in the Premises, irrespective of whether such laws or requirements are foreseen, unforeseen, ordinary, extraordinary or substantial, or whether such compliance is required because of changes in laws or by expansion and/or modifications of the Premises or the Building required to accommodate Port's particular use of the Premises. Notwithstanding the foregoing, Port shall not be obligated to comply with any applicable laws to the extent required by the acts or omissions of Sublandlord, its agents or other subtenants, or to make any capital improvements to the Premises or the Building except as may be required by Port's particular use of the Premises or improvements installed specifically for Port.

D. Prohibitions on Use. Without limiting the generality of the other provisions of this Article 6, and pursuant to Sublandlord's restrictions on use of the Property under the Master Lease, Port shall not cause, maintain, or allow any waste or nuisance in, on or about the Premises; permit on the Premises any substance or material which presents a fire, explosion or other hazard; conduct a sale or auction in or from the Premises; allow the Premises to be used for improper, immoral or objectionable purposes; permit noise or odors in the Premises which are objected to by Sublandlord or by a tenant or an occupant of the Building, or allow noise, vibrations or odors to carry outside the Premises; do, omit, or permit to be done or omitted anything which shall cause insurance premiums with respect to all or part of the Property or the Premises to be incurred or insurance coverage to be increased or insurance coverage to be canceled; receive, deliver or remove merchandise, supplies or equipment, or remove or store refuse, other than in areas approved in advance in writing by Sublandlord; allow use of the Premises for sleeping or personal living quarters, use the Premises or permit anything to be done in, on, or about the Premises which will in any way conflict with the Master Lease or with any applicable laws now in force or which may hereafter be enacted or promulgated; or bring into the Premises any chemicals or other items that are included in any list or definition of hazardous chemicals, materials or waste published by any federal, state or local governing or regulatory body, or any such chemicals, materials or waste which would trigger any employee "right-to-know" or notification provisions adopted by any such bodies.

E. Rules and Regulations. Port shall comply with the rules and regulations for the Building attached hereto as Exhibit D ("Rules"). Such Rules may be amended and/or supplemented from time to time, subject to the consent of Port as landlord under the Master Lease, which consent shall not be unreasonably withheld. Port agrees that Port, its employees and agents and, to the extent Port can require the same, its invitees, customers and others over whom Port can reasonably be expected to

exercise control, shall observe and perform the Rules as they may be amended or adopted. Port acknowledges that Sublandlord has no obligation to enforce, and shall have no liability for non-enforcement of, the Rules. Sublandlord agrees not to discriminate against Port in the enforcement of the Rules.

F. Use of Historic Railtrack Corridor. The Historic Railtrack Corridor shown on Exhibit A, which traverses the Premises, is a part of the Common Areas, and shall be available during normal Port business hours, 7:30 AM to 5:30 PM, Monday through Friday, excluding holidays from time to time observed by Port, for the non-exclusive use by Port, other tenants in the Building, their employees and invitees, and the general public. The Historic Railtrack Corridor shall not be available for use by other tenants in the Building, their employees and invitees, or the general public outside of normal Port business hours; provided, however, during such periods outside of normal Port business hours, the Port shall have the right to use the Historic Railtrack Corridor in conjunction with the use by the Port or the public of the meeting rooms created within the Premises.

ARTICLE 7 SERVICES AND UTILITIES

A. Utilities to Premises. Sublandlord shall furnish the Premises with (1) heating, air conditioning and ventilation in amounts reasonably required for normal office use of the Premises during the period from 7:30 a.m. to 6:00 p.m. Monday through Friday except for New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas, and such other holidays as are generally recognized in San Francisco, and (2) sewer services and water for lavatory, kitchen and drinking purposes on a twenty-four (24) hour-a-day, three hundred sixty-five (365) days-a-year basis ("Daily Basis"). Sublandlord may, at its option, have said utilities serving the Premises separately metered. In the event Sublandlord does not elect to have said utilities separately metered, all expenses incurred by Sublandlord for such utilities may be included in, and charged as Operating Expenses. Sublandlord also intends to install in the Premises pursuant to Exhibit B a supplemental heating, ventilation and air-conditioning system ("Supplemental HVAC"), which shall be separate from the Building system. Electricity shall be separately metered to the Premises (including, without limitation, electricity for the Supplemental HVAC), and shall be provided to the Premises pursuant to Article 7B. If any failure, stoppage or interruption of any utilities or services to be furnished by Sublandlord hereunder occurs, Sublandlord shall diligently attempt to restore service as promptly as possible and shall keep Port apprised of its efforts. Sublandlord shall not be liable in damages, nor shall there be any rent abatement or right on the part of Port to terminate this Sublease, arising out of (i) any interruption whatsoever in the supply of any of the Building's sanitary, electrical,

heating, air-conditioning, water, elevator or other essential services serving the Premises (or any essential utility services supplied by an outside provider) (collectively, "Essential Services") if such interruption is due to fire, accident, strike, governmental authority, acts of God or other causes beyond the reasonable control of Sublandlord, or (ii) any temporary interruption in Essential Services necessary to the making of alterations, repairs or improvements to the Building of any part of it. In the event that Sublandlord shall fail to remedy any interruption in the supply of any of the Essential Services which is within Sublandlord's reasonable ability or control to remedy, and such failure materially impairs Port's ability to carry on its business in the Premises for a period of two or more consecutive business days, then the Base Rent shall be abated based on the extent such interruption materially impairs Port's ability to carry on its business in the Premises. Such abatement shall continue until the Essential Services have been restored so that the lack of any remaining services no longer materially impairs Port's ability to carry on its business in the Premises. If such failure to provide any of the Essential Services which is within the reasonable ability or control of Sublandlord to remedy continues for sixty (60) consecutive days, and such failure interferes with Port's ability to carry on its business in the Premises for such period, then Port may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Sublease upon written notice to Sublandlord. Notwithstanding anything to the contrary above, Port shall not be entitled to any abatement of Rent or right to terminate in the event of any interruption in Essential Services to Port if such interruption is due to the acts, omissions or negligence of Port, its agents or employees.

B. Port to Provide Electrical Service. Port shall cause to be provided electrical power to the entire Building as follows:

1. Port shall, at Port's sole cost and expense, purchase and install the electrical transformer, high voltage switchgear and associated wiring and cabling for the Building in accordance with standard practices for electrical service and in the location and as otherwise specified in the construction drawings dated July 8, 1999 for the Base Building Improvements described on Appendix II to the Work Letter. Port shall coordinate with Sublandlord with respect to the timing of such installation so as to accommodate Sublandlord's schedule for construction of the Base Building Improvements.

2. Port shall cause to be provided to the entire Building electrical power in the amount necessary to meet all electrical requirements of the Building and all tenants thereof on a Daily Basis. Port shall purchase such electrical power from the provider at the bulk rate. Port shall bear the cost of such power to the Premises. Port shall bill Sublandlord and the other subtenants of the Building at the prevailing retail rate (without any additional service or other charge) for their respective usage as shown on the submeters for Sublandlord's space and each subtenant space. Port shall

so bill Sublandlord for electrical power to the Common Areas, and Sublandlord shall include such charges in Operating Expenses. The "prevailing retail rate" shall mean the rate for electricity generally paid by tenants of major office buildings in the San Francisco Financial District. The parties acknowledge that Port is merely purchasing electrical power from the provider and is not acting as a utility provider hereunder. Any interruption in electrical service shall be governed by Article 7.A. and the Master Lease.

C. Services to Premises. Port shall be responsible for services within the Premises and within the Historic Railtrack Corridor (as shown on Exhibit A), including janitorial, lightbulb and ballast replacement, repair and maintenance of the Supplemental HVAC, but excluding services required to maintain or repair the Building Structure or Building Systems as provided in Article 9.B hereof. In the event that Sublandlord, at Port's request, provides these or other services to the Premises that are not otherwise provided for in this Sublease, Port shall pay Sublandlord's reasonable charges for such services upon billing therefor. If an equivalent scope of such services is provided to all other tenants occupying the Property without separate charge, the charges for such services shall be included in the Operating Expenses.

D. Utilities Security and Services to Common Areas. Sublandlord shall be responsible for utilities (other than electricity) and services to the Common Areas (excluding the Historic Railtrack Corridor), including, but not limited to, janitorial services, lightbulb and ballast replacement and pest control. Sublandlord shall be responsible for exterior window washing with reasonable frequency. Sublandlord shall provide security services to the exterior Common Areas, excluding the Historic Railtrack Corridor. The cost of all such utilities, security and services shall be included in the Operating Expenses.

E. Changes in Laws. In the event any governmental entity promulgates or revises any statute, ordinance or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Sublandlord or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the provision of any other utility or service provided with respect to this Sublease, or in the event Sublandlord is required to make alterations or to perform maintenance with respect to, any part of the Property in order to comply with such mandatory controls, such compliance, the making of such alterations and/or the performance of such maintenance shall in no event entitle Port to any damages, relieve Port of the obligation to pay all Rent due hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Port.

F. Restrictions on Improvements. Without the prior written consent of Sublandlord, Port shall not place or install in the Premises any machine, equipment, files or other load the weight of which shall exceed the normal load-bearing capacity of the floors of the Building; and if Sublandlord consents to the placement or installation of any such machine, equipment, files or other load in the Premises, Port at its sole cost and expense shall reinforce the floor of the Premises in the area of such placement or installation, pursuant to plans and specifications approved by Sublandlord (after review by Sublandlord's consultant, whose fees shall be paid by Port) and otherwise in compliance with Article 10, to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural supports will be occasioned thereby.

G. Restrictions on Electrical Usage. Port shall not, without the prior written consent of Landlord, install or use heat generating machines or equipment or lighting other than Landlord's designated Building standard lights in the Premises which affect the temperature otherwise maintained by the Building HVAC system and the Supplemental HVAC. If such consent is given, Sublandlord shall have the right to install or cause Port to install supplementary air conditioning units in the Premises and the cost thereof, including the costs of installation, operation and maintenance thereof, shall be paid by Port to Sublandlord upon billing by Sublandlord. Port shall not, without Sublandlord's prior written consent, install lighting or equipment in the Premises that would cause the connected electrical load to exceed the Building standard maximum allowed wattage per useable square foot, which Building standard shall be as determined by Sublandlord in its reasonable discretion.

H. Sublandlord's Insurance. The parties acknowledge that Sublandlord shall maintain at all times during this Sublease such policies of insurance as are required to be maintained by Sublandlord as the tenant under Section 18 of the Master Lease.

ARTICLE 8 INSURANCE; WAIVER OF SUBROGATION AND CLAIMS

A. Port's Insurance. Port shall maintain the following insurance coverage during the Term: Port shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 10 93, insuring against claims for bodily injury (including death), property damages, personal injury and advertising liability occurring upon the Premises or operations incidental or necessary thereto located on the Premises or any part of the Premises, such insurance to afford protection in an amount not less than Three Million Dollars (\$3,000,000) each occurrence covering bodily injury and broad form property damage including contractual liability and products and completed operations coverage, except that

such insurance in excess of \$1,000,000 may be covered by a so-called "umbrella" or "excess coverage policy. In addition, if Port has (or is required under applicable law to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Port shall maintain liquor liability coverage in appropriate amounts. Port shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used in connection with Port's use and occupancy of the Premises with the limits specified above or such lesser liability limits as may be approved by Sublandlord. All liability insurance carried by Sublandlord hereunder shall name as additional insureds Sublandlord and Sublandlord's property manager, if any, and any other party reasonably specified by Sublandlord. Port shall also maintain during the Term an "all-risk" property damage insurance covering the Port's personal property, business records, fixtures and equipment, and all Leasehold Improvements in the Premises made by or for Port, for damage or other loss caused by fire or other casualty or causes including, but not limited to, vandalism, malicious mischief, theft, water damage of any type (including sprinkler leakage, bursting or stoppage of pipes), explosion, business interruption (in an amount sufficient to pay at least twelve (12) months Base Rent and Port's Pro Rata share of Operating Expenses and Taxes), in amounts not less than the full insurable replacement value of such personal property and Leasehold Improvements and full insurable value of such other interests of Port (subject to reasonable deductible amounts). Port shall self-insure for workers' compensation in accordance with applicable law, including, without limitation, the Jones Act, if required, and shall deliver evidence reasonably satisfactory to Sublandlord of such self-insurance and compliance with applicable law. Except as provided to the contrary herein, any insurance carried by Sublandlord or Port shall be for the sole benefit of the party carrying such insurance. All insurance carried by Port hereunder shall be primary insurance to, and non-contributing with, any other insurance that may be available to Sublandlord. Any insurance policies hereunder may be "blanket policies." All insurance required hereunder shall be provided by reputable insurers that are rated Best A-VIII or better (or a comparable successor rating).

B. Evidence of Insurance. Port shall provide Sublandlord with certificates evidencing such coverage prior to Port's entry of the Premises which certificates shall state that such insurance coverage may not be reduced or canceled without at least thirty (30) days' prior written notice to Sublandlord, and Port shall provide renewal certificates to Sublandlord at least thirty (30) days prior to expiration of such policies. Following consultation with Port, Sublandlord may, at any time, but not more frequently than once every three (3) years, upon not less than ninety (90) days' prior written notice, require Port to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of Sublandlord's risk manager it is the general commercial practice in San Francisco or in other cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Port with respect to risks comparable to those

associated with use of the Premises. In such event, Port shall promptly deliver to Sublandlord a certificate evidencing such new insurance amounts.

C. **Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent of insurance proceeds received with respect to the loss (unless Port self-insures, in which event the following waiver shall not be so limited), Port and Sublandlord each hereby waive any right of recovery against the other party for any loss or damage to the Building, the Premises, the contents of same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. Sublandlord and Port each shall obtain from their respective insurers under all policies of fire, theft, and other insurance maintained by either of them at any time during the term hereof insuring or covering the Building, the Premises or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one party might have against the other party, and Sublandlord and Port shall each reimburse the other for any cost or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

D. **Port's Right to Self-Insure.** Port may elect to self-insure for any or all of the risks which Port is required to insure against hereunder, provided that, prior to substitution of self-insurance for third-party insurance, Port shall deliver to Sublandlord evidence reasonably satisfactory to Sublandlord of the availability of funding for such self-insurance in the event of a loss in amounts and with comparable promptness of payment at least equal to the payment of insurance proceeds that would be available under the third-party policies required to be carried by Port hereunder.

ARTICLE 9 REPAIRS AND MAINTENANCE

A. **Premises.** Port shall keep the Premises in good and sanitary condition, working order and repair (including without limitation, interior window washing, carpet, wall-covering, interior doors, plumbing and other fixtures, equipment, alterations and improvements, whether installed by Sublandlord or Port). If any repairs, maintenance or replacements are required, Port shall promptly arrange for the same, at its sole discretion, either through Sublandlord for such reasonable charges as Sublandlord may from time to time establish, by Port's maintenance staff, or by contractors with whom Port has a contract. Any such repairs or maintenance shall be performed in a first class, workmanlike manner.

B. **Building Structure, Building Systems and Common Areas.** Without limiting Sublandlord's obligations under the Master Lease, Sublandlord shall at all times during the term maintain (1) the structural portion of the Building, including the pier substructures, pier deck, pier aprons, floor slabs, subflooring, roof, exterior walls,

load bearing and demising interior walls, windows including mullions and glazing, skylights, exterior doors and mullions, columns, beams, trusses, shafts (including elevator shafts), stairs, stairwells, and mechanical, electrical and telephone closets (collectively "Building Structure"); (2) the Building's mechanical, electrical, life safety, plumbing, security, sprinkler systems, elevators, lifts, and HVAC system (other than the Supplemental HVAC) (collectively "Building Systems"); and (3) the Common Areas (as shown on Exhibit A) in first class condition and repair and shall operate the Building in a first-class manner consistent with a quality office development located in the San Francisco Financial District. Notwithstanding anything in this Sublease to the contrary, Port shall not be required to maintain or to make any repair to, modification of, or addition to the Building Structure, Building Systems, or Common Areas except and to the extent required solely because of Port's use of the Premises for other than normal and customary general office and meeting uses customary for a public agency.

C. Broken Glass. Sublandlord shall have the right to require Port to replace, or reimburse Sublandlord for replacement of all plate glass, including windows, in or upon the Premises which is damaged or broken by Port, its employees, agents, contractors, guests or invitees, and all plate glass, including windows, in or upon the Building which is damaged or broken by Port, its employees, agents or contractors.

D. No Abatement. Except as otherwise provided in Article 15 relating to damage or destruction or Article 16 relating to a taking by power of eminent domain, there shall be no allowance, abatement or offset of Base Rent or other charges payable hereunder, or liability to Port for diminution of rental value or interference with Port's business and no claim by Port for eviction from the Premises by reason of inconvenience, annoyance or injury to Port arising from any repairs, alterations, replacements or improvements made to the Premises, the Building, the Common Areas, or any portion thereof by Sublandlord, its agents, employees or contractors, or by Sublandlord's mortgagee or by a beneficiary under a deed of trust covering the Premises. To the extent Sublandlord may be expressly responsible for repairs under this Sublease, Sublandlord shall not be liable to Port for failure to make repairs to the Premises, the Building, the Common Areas or any portion thereof, unless Sublandlord has received from Port written notice of the need for such repairs and has failed to commence and diligently proceed to complete such repairs within a reasonably practicable time thereafter. Except as otherwise permitted under Section 21 of the Master Lease, (i) Port shall not be entitled to make such repairs itself and deduct or offset the cost thereof against the Base Rent or other charges payable hereunder, and (ii) Port hereby waives all rights to make repairs at the expense of Sublandlord as provided by any law, statute, or ordinance now or hereafter in effect.

E. No Obligation for Improvements. Sublandlord has no obligation and has made no promise to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof except as is specified in Exhibit B hereto.

ARTICLE 10 ALTERATIONS AND LIENS

A. Construction of Leasehold Improvements. Sublandlord shall construct the Premises, perform the work and make the installations in the Premises pursuant to the Work Letter. All work and installations performed pursuant to the Work Letter are referred to herein as "the Leasehold Improvement Work" or "Leasehold Improvements."

B. Alterations by Port. Port shall not make or suffer to be made any alterations, additions or improvements to or of the Premises, or any part thereof, or attach any fixtures to the Premises, without first obtaining the prior written consent of Sublandlord, which consent shall not be unreasonably withheld or delayed. If Sublandlord consents to such work, such consent may be accompanied by Sublandlord's requirement that any such improvements be removed by Port if this Sublease is terminated early pursuant to Article 21.B. Any alterations, additions or improvements to the Premises, including but not limited to, wall coverings, panelings, built-in cabinet work (but excepting moveable furniture and trade fixtures, which may be removed at the end of the lease Term, provided their removal will not cause material damage to the Premises), shall, upon installation, become a part of the realty and belong to Sublandlord. Port shall submit detailed specifications, floor plans and necessary permits (if applicable) with respect to any requested alterations or improvements to Sublandlord for review. Sublandlord may request changes to such specifications or plans as a condition to giving its consent. In no event shall the alterations or improvements affect the structure of the Building or its facade.

Notwithstanding the foregoing, Port may perform the following alterations in the Premises without Sublandlord's consent, provided that at least thirty (30) days prior to commencement of such work, Port delivers plans and specifications to Sublandlord: (i) for alterations costing \$10,000 or less in the aggregate, or (ii) for alterations made for the purpose of reconfiguring the interior layout of the Premises, so long as, in the case of (i) or (ii), such alterations do not, in Sublandlord's reasonable judgment, affect the Building Systems, Building Structure or Building Lines (as "Lines" is defined in Article 13.A.) are not visible from any Common Areas or any other area outside of the Premises and do not violate the Public Trust or affect the historic landmark status of the Building or the availability of tax credits to Sublandlord in connection with the Building. Notwithstanding the foregoing, Port is not required to deliver plans and specifications to Sublandlord for work which complies with

item (ii) above, costs less than \$10,000 in the aggregate and involves work other than construction, such as replacement of carpet or other furnishings. Any work consented to by Sublandlord hereunder shall be done at Port's expense, shall be performed either by contractors approved by Sublandlord, or qualified Port employees, as Port may elect, and if required by Sublandlord, shall be performed under Sublandlord's supervision. As a condition to its consent, Sublandlord shall be entitled to request adequate assurance that all contractors who will perform such work have in force workers' compensation insurance, such other casualty, employee and public liability insurance as Sublandlord deems necessary to supplement the insurance coverage provided above, and such other requirements as Sublandlord may reasonably require. In the case of material alterations, additions or improvements, Sublandlord may require Port's contractors, if any, to post adequate completion and performance bonds. All work performed by Port hereunder shall be done in compliance with any permits issued therefor and otherwise in accordance with all applicable laws, and shall not cause Sublandlord to be in default under the Master Lease.

C. Title to Personal Property. Except as otherwise provided in Article 21.B regarding the early termination of this Sublease, all of Port's furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of Port and that can be removed without structural damage to the Premises (collectively, "Port's Personal Property") shall be and remain Port's property throughout and after the Term hereof.

D. Liens. Port shall keep the Premises and the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by Port. Sublandlord shall have the right to post and keep posted on the Premises any notices that may be allowed by law or which Sublandlord may deem proper to protect Sublandlord, the Premises and the Property from such liens. Port shall give Sublandlord notice at least twenty (20) days prior to commencement of any work on the Premises in order to afford Sublandlord the opportunity to post such notices.

ARTICLE 11 ENTRY BY SUBLANDLORD

Sublandlord may enter the Premises at reasonable hours upon reasonable advance written notice to Port (except in case of emergencies, for routine cleaning or other routine matters) to (a) inspect the same, (b) exhibit the same to prospective insurers, purchasers or lenders, (c) determine whether Port is complying with all of its obligations hereunder, (d) supply any service to be provided by Sublandlord to Port hereunder, (e) post notices of non-responsibility, and (f) make repairs required of Sublandlord under the terms hereof or repairs to any adjoining space or to utility services or to make repairs, alterations or improvements to any other portion of the

Building; provided however, that all such work shall be done as promptly as reasonably possible and so as to cause as little interference to Port's use of the Premises as reasonably possible. Port hereby waives any claim for damages for any injury or inconvenience to or interference with Port's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry, including, without limitation, entry in case of emergency as described below. Sublandlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises, excluding Port's vaults, safes, legal department and human resources department and any other areas designated in writing by Port and agreed to by Sublandlord in writing in advance. In an emergency Sublandlord shall have the right to use any and all such means which Sublandlord deems proper to open said doors in order to obtain entry to the Premises, and any entry to the Premises obtained by Sublandlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Port from the Premises, or any portion thereof.

ARTICLE 12 HAZARDOUS MATERIALS

A. Restrictions on Use. Port shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any "Hazardous Material" (as defined below) upon or about the Property, nor permit Port's employees, agents, contractors, and other occupants of the Premises to engage in such activities upon or about the Property. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Premises of substances customarily used in offices (or such other business or activity expressly permitted to be undertaken in the Premises under Article 6), provided: (i) such substances shall be used and maintained only in such quantities as are reasonably necessary for such permitted use of the Premises, strictly in accordance with applicable law and the manufacturers' instructions therefor, (ii) such substances shall not be disposed of, released or discharged at the Property, and shall be transported to and from the Premises in compliance with all applicable laws and as Sublandlord shall reasonably require, (iii) if any applicable law or Sublandlord's trash removal contractor requires that any such substances be disposed of separately from ordinary trash, Port shall make arrangements at Port's expense for such disposal directly with a qualified and licensed disposal company at a lawful disposal site (subject to scheduling and approval by Sublandlord), and shall ensure that disposal occurs frequently enough to prevent unnecessary storage of such substances in the Premises, and (iv) any remaining such substances shall be completely, properly and lawfully removed from the Premises upon the early termination of this Sublease (if any) but not the expiration of the Term.

B. Notification. Port shall promptly notify Sublandlord of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against Port or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where Port is required by applicable law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. Sublandlord shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law. At such times as Sublandlord may reasonably request, Port shall provide Sublandlord with a written list identifying any Hazardous Material then used, stored, or maintained upon the Premises, the use and approximate quantity of each such material, a copy of any material safety data sheet ("MSDS") issued by the manufacturer thereof, written information concerning the removal, transportation and disposal of the same, and such other information as Sublandlord may reasonably require or as may be required by law. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of an MSDS.

C. Remediation. If any Hazardous Material is released, discharged or disposed of by Port or any other occupant of the Premises, or their employees, agents or contractors, on or about the Property in violation of the foregoing provisions, Port shall immediately, properly and in compliance with applicable laws clean up and remove the Hazardous Material from the Property and any other affected property and clean or replace any affected personal property (whether or not owned by Sublandlord), at Port's expense. Such clean up and removal work shall be subject to Sublandlord's prior written approval and direction (except in emergencies), and shall include, without limitation, any testing, investigation, and the preparation and implementation of any remedial action plan required by any governmental body having jurisdiction or reasonably required by Sublandlord. If Port shall fail to comply with the provisions of this Article within five (5) days after written notice by Sublandlord, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, Sublandlord may (but shall not be obligated to) arrange for such compliance directly or as Port's agent through contractors or other parties selected by Sublandlord, at Port's expense (without limiting Sublandlord's other remedies under this Sublease or applicable law). If any Hazardous Material is released, discharged or disposed of on or about the Property and such release,

discharge or disposal is not caused by Port or other occupants of the Premises, or their employees, agents or contractors, such release, discharge or disposal shall be deemed casualty damage under Article 15 to the extent that the Premises or Common Areas serving the Premises are affected thereby; in such case, Sublandlord and Port shall have the obligations and rights respecting such casualty damage provided under Article 15.

D. Sublandlord's Obligations. Notwithstanding anything to the contrary, Sublandlord shall not be obligated to request, review, approve, act upon or provide any information or precautions referred to in this Article 12, and any failure by Sublandlord to do so shall not be deemed approval or authorization by Sublandlord of the actions of Port.

ARTICLE 13 COMMUNICATIONS AND COMPUTER LINES

A. Installation. Port may install, maintain, replace, or use any communications or computer wires, cables and related devices (collectively, the "Lines") in or serving the Premises, provided: (i) to the extent required by Article 10, Port shall obtain Sublandlord's prior written consent, and comply with all of the other provisions of Article 10, (ii) any such installation, maintenance, replacement or use shall comply with all applicable laws and good work practices, and shall not interfere with the use of any then existing Lines at the Property, (iii) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Building, as determined in Sublandlord's reasonable opinion, (iv) if Port at any time uses any equipment that may create an electromagnetic field exceeding the normal insulation ratings of ordinary twisted pair riser cable or cause a radiation higher than normal background radiation, the Lines therefor (including riser cables) shall be appropriately insulated (at Port's sole cost and expense) to prevent such excessive electromagnetic fields or radiation, (v) as a condition to permitting the installation of new Lines, Sublandlord may require that Port remove existing Lines located in or serving the Premises, (vi) Port's rights shall be subject to the rights of any regulated telephone company or other utility, and (vii) Port shall pay all costs in connection therewith. Sublandlord shall furnish access to Port and its consultants and contractors to the main telephone service room serving the Building for which access is needed for proper installation and maintenance of all such facilities and equipment. Sublandlord reserves the right to require that Port remove any Lines located in or serving the Premises which (a) are installed in violation of these provisions, or (b) are at any time in violation of any applicable laws or (c) represent a dangerous or potentially dangerous condition (whether such Lines were installed by Port or any other party), within three (3) days after written notice from Sublandlord.

B. Sublandlord's Lines. Except as provided in Exhibit B, Sublandlord may (but shall not have the obligation to): (i) install new Lines at the Property, (ii) create additional space for Lines at the Property, and (iii) reasonably direct, monitor and/or supervise the installation, maintenance, replacement and removal of, the allocation and periodic re-allocation of available space (if any) for, and the allocation of excess capacity (if any) on, any Lines now or hereafter installed at the Property by Sublandlord, Port or any other party (but Sublandlord shall have no right to monitor or control the information transmitted through such Lines). Such rights shall not be in limitation of other rights that may be available to Sublandlord by applicable law or otherwise.

C. No Liability. Except to the extent arising from the gross negligence or willful misconduct of Sublandlord, its agents or employees, Sublandlord shall have no liability for damages arising from, and Sublandlord does not warrant that Port's use of any Lines will be free from, the following (collectively called "Line Problems"):
(i) any eavesdropping or wire-tapping by unauthorized parties, (ii) any failure of any Lines to satisfy Port's requirements, or (iii) any shortages, failures, variations, interruptions, disconnections, loss or damage caused by the installation, maintenance, replacement, use or removal of Lines by or for other tenants or occupants of the Building, by any failure of the environmental conditions or the power supply for the Property to conform to any requirements for the Lines or any associated equipment, or any other problems associated with any Lines by any other cause. Under no circumstances shall any Line Problems be deemed an actual or constructive eviction of Port, render Sublandlord liable to Port for abatement of Rent, or relieve Port from performance of Port's obligations under this Sublease. In no event shall Sublandlord be liable for damages by reason of loss of profits, business interruption or other consequential damage arising from any Line Problems.

D. Satellite Dish. Port shall have the right to install one or more satellite dish(es) on the roof of the Building, subject to the following terms and conditions:
(i) Port shall obtain Sublandlord's prior written consent to the location, size, and manner of installation, which consent shall not be unreasonably withheld; (ii) any such installation shall comply with Article 10 hereof and all applicable laws and regulations, shall not violate the Public Trust, and Port shall obtain all approvals and permits as required by any applicable law or regulation, or governmental agency having jurisdiction over the Building; and (iii) such installation and maintenance shall be at Port's sole cost and expense. Sublandlord reserves the right to require that Port remove any satellite dish which is installed in violation of these provisions or is at any time in violation of any applicable laws, or represents a dangerous or potentially dangerous condition, within three (3) days after written notice from Sublandlord. Except to the extent arising from the gross negligence or willful misconduct of Sublandlord, its agents or employees, Sublandlord shall have no liability for damages arising from the installation, use or maintenance of the satellite dish, or any problems,

costs or expenses incurred by Port or any other party in connection therewith. Subject to the provisions of the Master Lease, Sublandlord may install a satellite dish or dishes, or permit other occupants of the Building or any other party to install a satellite dish or dishes on the roof of the Building.

ARTICLE 14
SAFETY AND SECURITY DEVICES,
SERVICES AND PROGRAMS

The parties acknowledge that safety and security devices, services and programs provided by Sublandlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts, or ensure safety of persons or property. The risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Port with respect to Port's property and interests, and Port shall obtain insurance coverage to the extent Port desires protection against such criminal acts and other losses. Port agrees to cooperate in any reasonable safety or security program developed by Sublandlord or required by applicable law. Notwithstanding the foregoing, the parties acknowledge that Sublandlord has not agreed, and is not obligated, to provide any security devices, services or programs to the Premises or the Property (other than security services to the exterior Common Areas).

ARTICLE 15
CASUALTY DAMAGE OR DESTRUCTION

A. Sublandlord's Repair. In the event the Premises or the portion of the Building necessary for Port's use and enjoyment of the Premises are damaged by fire, earthquake, act of God, the elements or other casualty, and Sublandlord is required to or elects to repair the same under Section 12.3 or 12.4 of the Master Lease, then Sublandlord shall proceed to repair the Premises in accordance with the schedule and standards set forth in Section 12.3 and 12.4 of the Master Lease, as applicable. This Sublease shall remain in full force and effect except that an abatement of Base Rent shall be given to Port for such portion of the Premises as is rendered unusable in the conduct of Port's business during the time such portion is so unusable.

B. Termination of Sublease. In the event Sublandlord elects to terminate the Master Lease as permitted thereunder for an Uninsured Casualty or Major Damage or Destruction (as defined in the Master Lease), then this Sublease shall terminate effective as of the termination date of the Master Lease. The parties intend that the provisions of this Article 15.B. and Section 12 of the Master Lease govern fully their rights and obligations in the event of damage or destruction, and Sublandlord and Port

each hereby waives and releases any right to terminate this Sublease in whole or in part under Section 1932, subdivision 2, and Section 1933, subdivision 4, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

C. Limitation on Damages. Except as otherwise provided for in the Master Lease, Port will not be entitled to any compensation or damages related to, but not limited to, any compensation or damages for (i) loss of the use of the whole or any part of the Premises, (ii) damage to Port's personal property in or improvements to the Premises, or (iii) any inconvenience, annoyance or expense occasioned by such damage or repair (including moving expenses and the expense of establishing and maintaining any temporary facilities).

D. Repairs to Personal Property. If Sublandlord is then carrying insurance on the Leasehold Improvements or if Port at its sole option makes funds available to Sublandlord, Sublandlord shall also repair the Leasehold Improvements; in any other case, Sublandlord, in repairing the Premises, shall not be required to repair any injury or damage to the Personal Property of Port, or to make any repairs to or replacement of any alterations, additions, improvements or fixtures installed on the Premises by or for Port. Such repairs and replacements shall timely be made by Port.

ARTICLE 16 CONDEMNATION

If the whole or any material part of the Premises or Building shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, and if by such condemnation the Master Lease terminates pursuant to the terms of Section 13 thereof, then this Sublease shall terminate concurrently therewith. The award or payment in connection therewith shall be governed by Section 13.4 of the Master Lease, except that the parties shall have the right to file any separate claim available to them by reason of their interests under this Sublease, including, without limitation, any awards to Port for any taking of Port's Personal Property and fixtures belonging to Port, and for moving expenses. All Rent shall be apportioned as of the date of such termination, or the date of such taking, whichever shall first occur. If any part of the Premises shall be taken, and this Sublease shall not be so terminated, the Rent shall be proportionately abated.

ARTICLE 17
THIRD PARTY CLAIMS

A. Waiver. Port, as a material part of the consideration to be rendered to Sublandlord, waives any and all claims against Sublandlord for damages by reason of any death of or injury to any person or persons, including Port, Port's agents, servants, and employees, or third persons, in or about the Premises or the Property, or any injury to property of any kind whatsoever and to whomsoever belonging, including property of Port, arising at any time and from any cause other than by reason of a breach of this Sublease by Sublandlord or the active negligence or willful misconduct of Sublandlord, its employees or agents, while in, upon, or in any way connected with the Premises or the Property.

B. Port's Indemnity. Port shall indemnify, defend and hold harmless ("Indemnify") Sublandlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees, (collectively, "Claims"), incurred as a result of (a) Port's use of the Premises, (b) any default by Port in the performance of any of its obligations under this Sublease, or (c) any negligent acts or omissions of Port or its Agents, in, on or about the Premises or the Property; provided, however, Port shall not be obligated to Indemnify Sublandlord or its Agents to the extent any Claim arises out of the active negligence or willful misconduct of Sublandlord or its Agents. In any action or proceeding brought against Sublandlord or its Agents by reason of any Claim Indemnified by Port hereunder, Port may, at its sole option, elect to defend such Claim by attorneys in the City's Office of the City Attorney, by other attorneys selected by Port, or both. Port shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Sublandlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Port's obligations under this Article 17 shall survive the termination of the Sublease.

C. Sublandlord's Indemnity. Sublandlord shall Indemnify Port and its Agents against any and all Claims incurred as a result of (a) any default by Sublandlord in the performance of any of its obligations under this Sublease, or (b) any negligent acts or omissions of Sublandlord or its Agents in, on or about the Premises or the Property; provided, however, Sublandlord shall not be obligated to Indemnify Port or its Agents to the extent any Claim arises out of the active negligence or willful misconduct of Port or its Agents. In any action or proceeding brought against Port or its Agents by reason of any Claim Indemnified by Sublandlord hereunder, Sublandlord may, at its sole option, elect to defend such Claim by attorneys selected by Sublandlord. Sublandlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Port shall have the right, but not the obligation, to participate in the defense of any such Claim at

its sole cost. Sublandlord's obligations under this Section shall survive the termination of the Sublease.

ARTICLE 18 ASSIGNMENT AND SUBLETTING

A. **Transfers.** Port shall not, without the prior written consent of Sublandlord, which consent shall be given only upon the satisfaction of the conditions contained in this Article as set forth below: (i) sublet the Premises or any part thereof, or (ii) permit the use of the Premises by any persons other than Port, its employees, personnel assigned to the Port in connection with Port business, and invitees or (iii) assign or otherwise transfer this Sublease or any interest hereunder (all of the foregoing are hereinafter sometimes referred to collectively as "Transfers" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "Transferee"). The Port shall have the right to assign this Sublease to an agency of the City and County of San Francisco or of the State of California if either is the successor agency of Port and assumes the business and functions of the Port (a "Successor Agency") without the consent of Sublandlord, provided that Port shall notify Sublandlord of such assignment at least thirty (30) days in advance. Any other Transfer shall require the consent of Sublandlord, which consent shall not be unreasonably withheld, provided that Port shall comply with the following: If Port shall desire Sublandlord's consent to any Transfer, Port shall notify Sublandlord in writing, which notice shall include: (a) the proposed effective date (which shall not be less than thirty (30) nor more than one hundred eighty (180) days after Port's notice), (b) the portion of the Premises to be Transferred (herein called the "Subject Space"), (c) the terms of the proposed Transfer and the consideration therefor, the name and address of the proposed Transferee, and a copy of all proposed or existing documentation effecting the proposed Transfer, (d) current financial statements (audited, if available) of the proposed Transferee certified by an officer, partner or owner thereof, and any other information reasonably requested by Sublandlord to enable Sublandlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business, and prior experience in owning and operating other businesses, and (e) the proposed use of the Subject Space by the proposed Transferee. Any Transfer made without complying with this Article shall, at Sublandlord's option, be null, void and of no effect (unless waived in writing by Sublandlord), or shall constitute a Default under this Sublease. Whether or not Sublandlord shall consent to the Transfer and to the Transferee, Port shall pay Sublandlord's reasonable review and processing expenses for each request, including, without limitation, legal fees, not to exceed \$1,500.00 ("Fee Cap") for each proposed Transfer, within thirty (30) days after written request by Sublandlord. Effective as of each Adjustment Date, the Fee Cap shall be increased by fifty percent (50%) of the then-existing Fee Cap. Port shall not pledge, hypothecate or encumber this Sublease

or any interest herein without the prior written consent of Sublandlord which consent shall not be unreasonably withheld or delayed.

B. Approval. Sublandlord shall consent to any Transfer to an agency of the City or County of San Francisco (other than Transfer to a Successor Agency, which Transfer is governed by Article 18.A above) so long as, in Sublandlord's reasonable judgment, such agency and its intended use of the Subject Space does not violate the Public Trust and is a tenant and use appropriate for a quality office Building in the San Francisco Financial District, and, in the case of an assignment of this Sublease, such agency is comparable to or better than Port in terms of funding and longevity. An Agency which satisfies the above conditions shall hereinafter be referred to as a "Qualified Agency." Sublandlord shall not unreasonably withhold its consent to any other proposed Transfer on the terms specified in Port's notice, provided that the following conditions are satisfied: (i) Transferee is of a character or reputation or engaged in a business which is consistent with the quality of other tenants in the Building and would not be a significantly less prestigious occupant of the Building than Port, (ii) Transferee intends to use the Subject Space for purposes which are permitted under this Sublease, (iii) In the case of a sublease for the balance of the Term hereof for less than all of the Premises, the Subject Space and the balance of the Premises shall each be in leasable configuration with appropriate means of ingress and egress suitable for normal renting purposes, (iv) Transferee is not a person with whom Sublandlord or any agent of Sublandlord has solicited or is negotiating with as a potential tenant at the Building, (v) Transferee has a reasonable financial condition in relation to the obligations to be assumed in connection with the Transfer, and (vi) Port is not in Default hereunder either at the time Port requests consent to the proposed Transfer or on the effective date of the Transfer. All Transfers shall be conditioned upon execution by Port and Transferee of documentation concerning the Transfer which is reasonably acceptable to Sublandlord, including without limitation a sublease or assignment and a Sublandlord's consent on Sublandlord's form, all of which shall be delivered to Sublandlord prior to the Transfer.

C. Transfer Premium. Port shall pay Sublandlord fifty percent (50%) of any Transfer Premium derived by Port from any Transfer. "Transfer Premium" shall mean all rent, additional rent or other consideration paid by such Transferee in excess of the Base Rent payable by Port under this Sublease (on a per rentable square foot basis, if less than all of the Premises is transferred), after deducting the unamortized reasonable costs paid by Port for any changes, alterations and improvements to the Premises, any customary brokerage commissions paid in connection with the Transfer, any improvement allowance or other economic concession paid by Port to the Transferee, reasonable attorneys' fees, reasonable costs of advertising the space for Transfer, and any other reasonable costs actually paid by Port in Transferring the space. In connection with a subletting, such deductions shall be amortized over the term of the sublease. The percentage of the Transfer Premium due Sublandlord

hereunder shall be paid within thirty (30) days after Port receives any Transfer Premium from the Transferee.

D. Recapture. Notwithstanding anything to the contrary contained in this Article, Sublandlord shall have the option to recapture the Subject Space, by giving written notice to Port within thirty (30) days after receipt of Port's notice of any proposed assignment or sublease of all or any portion of the Premises for the balance of the term to a Transferee other than a Successor Agency or a Qualified Agency. Such recapture notice shall cancel and terminate this Sublease with respect to the Subject Space as of the date stated in Port's notice as the effective date of the proposed Transfer (or, at Sublandlord's option, shall cause the assignment or sublease to be made to Sublandlord or its agent, in which case the parties shall execute the Transfer documentation promptly thereafter). If this Sublease shall be canceled with respect to less than the entire Premises, the Base Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Port in proportion to the number of rentable square feet contained in the Premises. This Sublease as so amended shall continue thereafter in full force and effect and, upon request of either party, the parties shall execute written confirmation of the same.

E. Terms of Consent. If Sublandlord consents to a Transfer: (i) the terms and conditions of this Sublease (except as set forth in Article 18.F,) shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Port or a Transferee, (iii) no Transferee other than a Successor Agency shall succeed to any rights provided in this Sublease or any amendment hereto to expand the Premises, or lease additional space, any such rights being deemed personal to Port (or to a Successor Agency), (iv) Port shall deliver to Sublandlord promptly after execution, an executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Sublandlord, and (v) Port shall furnish, upon Sublandlord's request, a complete statement certified by an independent certified public accountant, or Port's chief financial officer, setting forth in detail the computation of any Transfer Premium Port has derived and shall derive from such Transfer. Sublandlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Port relating to any Transfer and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Port shall within thirty (30) days after demand pay the deficiency, and if understated by more than three percent (3%), Port shall pay Sublandlord's costs of such audit. Any sublease hereunder shall be subordinate and subject to the provisions of this Sublease, and if this Sublease shall be terminated during the term of any sublease, Sublandlord shall have the right to: (aa) treat such sublease as canceled and repossess the Subject Space by any lawful means, or (bb) require that such sublessee attorn to and recognize Sublandlord as its landlord under any such sublease. If Port shall Default and fail to cure within the time permitted for cure under Article 22, Sublandlord is hereby irrevocably authorized to

Expiration Date of this Sublease, and all obligations or rights of either party hereunder expressly arising on or following such expiration shall survive such expiration.

B. Early Termination of Sublease. If this Sublease terminates prior to the expiration or earlier termination of the Master Lease, then this Section 21.B shall govern. In such event, Port shall surrender possession of the Premises in good condition and repair, ordinary wear and tear excepted, broom clean, and shall surrender all keys and any key cards to Sublandlord, and advise Sublandlord as to the combination of any locks or vaults then remaining in the Premises, shall remove all of Port's moveable trade fixtures and personal property from the Premises and shall repair any damage to the Premises caused by such removal. All obligations or rights of either party arising during or attributable to the period ending upon the early termination of this Sublease, and all obligations or rights of either party hereunder expressly arising on or following such early termination, shall survive such early termination. Except as otherwise provided herein, (including, without limitation, Article 10.B hereof) all improvements, fixtures and other items in or upon the Premises (except trade fixtures and Personal Property belonging to Port), whether installed by Port or Sublandlord, shall be Sublandlord's property and shall remain upon the Premises, all without compensation, allowance or credit to Port. However, if Sublandlord directs the removal of such foregoing items, Port shall promptly remove such of the foregoing items as are designated in such notice and restore the Premises to the condition in which it existed prior to the installation thereof. Notwithstanding the foregoing, Port shall not be required to remove any improvements installed pursuant to Article 10 (and not pursuant to the Work Letter) unless Sublandlord's consent to such improvements included notification that Sublandlord would require removal pursuant to this Article 21. If Port shall fail to perform any repairs or restoration, or fail to remove any improvements, fixtures, or other items from the Premises required hereunder, Sublandlord may do so, and Port shall pay Sublandlord the cost thereof upon demand. All personal property removed from the Premises by Sublandlord pursuant to any provisions of this Sublease or any applicable law may be handled or stored by Sublandlord at Port's expense, and Sublandlord shall in no event be responsible for the value, preservation or safekeeping thereof. All personal property not removed from the Premises or retaken from storage by Port within thirty (30) days after the early termination of this Sublease or Port's right to possession shall, at Sublandlord's option, be conclusively deemed to have been conveyed by Port to Sublandlord as if by bill of sale without payment by Sublandlord.

direct any Transferee to make all payments under or in connection with the Transfer directly to Sublandlord (which Sublandlord shall apply towards Port's obligations under this Sublease) until such Default is cured.

F. Release of Port's Liability. Upon occurrence of an assignment of Port's entire interest in this Sublease, approved by Sublandlord under Section 18.B hereof, Port will be released from liability solely for obligations arising under this Sublease on or after the date of such assignment. The consent by Port to an assignment hereunder is not in any way to be construed to relieve any transferee of Port from its obligation to obtain the express consent in writing of Sublandlord to any further Transfer.

ARTICLE 19 PORT'S TAXES

Subject to Article 3.A and 3.C hereof, and except as otherwise exempt as described in Section 3.A hereof, Port shall pay prior to delinquency all taxes, assessments, license fees, charges or other governmental impositions assessed against or levied or imposed upon Port's subleasehold interest, trade fixtures, furnishings, equipment, and other personal property and the business conducted by Port on or from the Premises, only to the extent that Port has not paid Port's Pro-Rata Share of such Taxes pursuant to Article 3.C. If the assessed value of the Property is increased by the inclusion therein of a value placed upon any alterations or improvements to the Premises made by or for Port, then Port shall pay to Sublandlord, upon written demand, the increase in taxes so levied against Sublandlord only to the extent that Port has not paid its Pro-Rata Share of such Taxes pursuant to Article 3.C. Port shall pay any rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the Rent or services herein or otherwise respecting this Sublease (other than Sublandlord's net income taxes) all only to the extent that Port has not paid its Pro-Rata Share of such Taxes pursuant to Article 3.C.

ARTICLE 20 SUBORDINATION AND ATTORNMENT

This Sublease is subject and subordinate to the Master Lease, a Memorandum of which was recorded in the Official Records of the City and County of San Francisco, any mortgage or deed of trust (a "Mortgage") hereafter placed by Sublandlord upon the Premises, and all other encumbrances and matters of public record applicable to the Premises (each an "Encumbrance"); provided that as a condition to any such Encumbrance, the holder of the Encumbrance shall, at Port's request, enter into a commercially reasonable subordination, nondisturbance and attornment agreement with Port. Notwithstanding the foregoing, Sublandlord shall

have the right to subordinate or cause to be subordinated to this Sublease any Encumbrance. In the event that any ground lease or underlying lease terminates for any reason or any holder of a mortgage or deed of trust ("Lender") forecloses on the Master Lease or Sublease or conveys the Master Lease or Sublease in lieu of foreclosure for any reason, Port shall pay subsequent Rent and attorn to and become the tenant of such successor Sublandlord, at the option of such successor-in-interest, provided that Port has received proper written notice of such succession and the name and address of the successor landlord, and further provided that, in the case of any Encumbrance hereafter executed, as a condition to such attornment the holder of such Encumbrance shall, at Port's request, agree that so long as Port is not in default under Article 22, such holder shall recognize this Sublease and shall not disturb Port in its possession of the Premises for any reason other than one that would entitle Sublandlord to terminate this Sublease or otherwise dispossess Port of the Premises in accordance with the terms hereof. The provisions of this Article shall be self-operative and no further instrument shall be required other than as provided herein. Port agrees, however, to execute upon request by Sublandlord and in a form reasonably acceptable to Port, any additional documents evidencing the priority or subordination of this Sublease with respect to any such Encumbrance as provided herein.

In the event of attornment, no holder of such Encumbrance, purchaser at foreclosure sale or grantee of a deed in lieu of foreclosure shall be: (i) liable for any act or omission of Sublandlord or subject to any offsets or defenses which Port might have against Sublandlord (prior to such party becoming Sublandlord under such attornment) except such act or omission as constitutes a continuing non-monetary default under the Sublease at the time of Lender's succession to the interest of the Sublandlord under the Sublease, and of which such party receives written notice and opportunity to cure; (ii) liable for any security deposit or bound by any prepaid Rent, in excess of Rent for the month in which such party becomes Sublandlord under such attornment, not actually received by such party; or (iii) bound by any future modification of this Sublease not consented to by such party.

ARTICLE 21 RETURN OF POSSESSION

A. Expiration of Sublease at end of Term. At the expiration of this Sublease occurring on the Expiration Date set forth in the Basic Sublease Information, or upon the earlier termination of this Sublease occurring concurrently with the earlier termination of the Master Lease, the interest of Port as the subtenant hereunder, and the interest of Port as the owner of the Property and landlord under the Master Lease shall merge, and Port shall have no obligation to surrender possession of the Premises or any fixtures, equipment, or personal property to Sublandlord. All obligations or rights of either party arising during or attributable to the period ending upon the

ARTICLE 22
DEFAULT BY PORT; SUBLANDLORD'S REMEDIES

A. **Default.** The occurrence of any one or more of the following events shall constitute a "Default" by Port which, if not cured within any applicable time permitted for cure below, shall give rise to Sublandlord's remedies set forth in paragraph B below:

1. Port's failure to make any timely payment of Base Rent, or Port's Pro Rata Share of Operating Expenses and Taxes when due hereunder, and to cure such nonpayment within fourteen (14) days after receipt of written notice thereof from Sublandlord; provided however, Sublandlord shall not be required to give such notice on more than three (3) occasions during any calendar year, and failure to pay any Base Rent or Port's Pro Rata Share of Operating Expenses and Taxes thereafter when due during such calendar year shall be an immediate Event of Default without need for further notice (provided that nothing herein shall be deemed a waiver of the notice requirements of California Code of Civil Procedure Section 1161 or its successor);

2. Port abandons the Premises within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Sublandlord;

3. Port fails to maintain any insurance required to be maintained by Port under this Sublease, which failure continues without cure for five business days after written notice from Sublandlord, or, if such cure cannot reasonably be completed within such five business day period, if Port does not within such five business day period commit such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter; or

4. Port's failure to perform any other covenant or obligation of Port hereunder (including, without limitation, Port's obligation to pay any sum due hereunder other than Base Rent and Port's Pro Rata Share of Operating Expenses and Taxes) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Sublandlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if Port commences such cure within such period and diligently prosecutes such cure to completion within a reasonable time thereafter; or

5. Port suffers or permits an assignment of this Sublease or any interest therein to occur in violation of this Sublease, or sublets all or any portion of the premises in violation of this Sublease.

B. Remedies. In the event of a Default by Port as provided in Article 22.A above, Sublandlord may, at any time thereafter, with or without notice or demand and without limiting Sublandlord in the exercise of a right or remedy which Sublandlord may have by reason of such Default and, except as otherwise provided for herein, in addition to any other right or remedy Sublandlord may have at law or in equity (all of which remedies shall whenever possible be deemed to be cumulative and not exclusive) exercise any or all of the following remedies:

1. Specific Performance and Collection of Rent. Sublandlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Article 22.B.2 and 22.B.3 below) without prior demand or notice except as required by applicable law: (i) to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Sublease, or restrain or enjoin a violation or breach of any provision hereof, and (ii) to sue for and collect any unpaid Rent which has accrued as provided in Article 22.A. above.

2. Right to Terminate Sublease. Sublandlord's rights to terminate the Sublease shall be limited exclusively to the rights set forth in this Article 22.B.2, anything else in this Sublease or at law or equity notwithstanding. Sublandlord may terminate this Sublease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination, provided, however, in the case of an Event of Default under Article 22.A.3, Sublandlord may only exercise the remedy of termination if such Event of Default involves a material breach that cannot be cured by the payment of money (or a breach that can be so cured, but which Port fails promptly to cure), or a willful or fraudulent breach by Port of Port's covenants and obligations under this Sublease. Termination of this Sublease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, any appointment of a receiver upon Port's initiative to protect its interest hereunder, and any transfer to the State of California pursuant to rights reserved under the Burton Act (Stats. 1968, Ch.1333) shall not in any such instance constitute a termination of Port's right to possession (so long as such transfer does not violate the Public Trust or constitute a transfer to an entity whose use of the Premises is not appropriate to a first-class office building in the San Francisco Financial District.) No act by Sublandlord other than giving notice of termination to Port in writing shall terminate this Sublease. On termination of this Sublease, Sublandlord shall have the right to recover from Port all sums allowed under California Civil Code Section 1951.2, and

any other applicable statutes or equitable principles, including, without limitation, all Costs of Reletting (as defined in Article 22.C. below) and recovery of the worth at the time of award of the amount by which the unpaid Base Rent and Port's Pro Rata share of Operating Expenses and Taxes for the balance of the Term after the time of award exceeds the amount of Base Rent and Port's Pro Rata share of Operating Expenses and Taxes loss for the same period that the Port proves could have been reasonably avoided, as computed pursuant to subsection (b) of California Civil Code Section 1951.2.

3. Continue Sublease. Continue this Sublease in effect even though Port has breached the Sublease and abandoned the Premises, and enforce all of Sublandlord's rights and remedies under this Sublease, as provided by California Civil Code Section 1951.4, including the right to recover Rent as it becomes due for so long as Sublandlord does not terminate Port's right to possession. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver upon Sublandlord's initiative to protect its interest under this Sublease shall not constitute a termination of Port's right to possession.

4. Entry Upon Abandonment or Recovery of Possession. Following a termination of the Sublease after Port's abandonment of the Premises or after issuance of a court order or judgment giving Sublandlord the right to possession of the Premises, Sublandlord may enter the Premises and remove therefrom all persons not claiming rights as tenants and all property, and store such property in a public warehouse or elsewhere at the cost and expense of and for the account of Port. In the event that Port shall not immediately pay the cost of storage of such property after the same has been stored for a period of thirty (30) days or more, Sublandlord may sell any or all such property at a public or private sale in such manner and at such times and places as Sublandlord may deem proper, without notice to or demand upon Port, and apply the proceeds therefrom pursuant to applicable California law.

C. Certain Definitions. "Costs of Reletting" shall include, without limitation, all reasonable costs and expenses incurred by Sublandlord for any repairs, maintenance, changes, alterations and improvements to the Premises, brokerage commissions, advertising costs, attorneys' fees, any customary free rent periods or credits, tenant improvement allowances, take-over lease obligations and other customary, necessary or appropriate economic incentives required to enter leases with Replacement Tenants, and costs of collecting rent from Replacement Tenants. "Replacement Tenants" shall mean any persons to whom Sublandlord relets the Premises or any portion thereof pursuant to this Article 22.

D. Other Matters. No re-entry or repossession, repairs, changes, alterations and additions, reletting, acceptance of keys from Port, or any other action or omission by Sublandlord shall be construed as an election by Sublandlord to terminate this Sublease or Port's right to possession, or accept a surrender of the Premises, nor shall the same operate to release the Port in whole or in part from any of Port's obligations hereunder, unless express written notice of such intention is sent by Sublandlord or its agent to Port. To the fullest extent permitted by applicable law, all rent and other consideration paid by any Replacement Tenants shall be applied: first, to the costs of re-letting, second, to the payment of any Base Rent and Port's Pro Rata Share of Operating Expenses and Taxes theretofore accrued, and the residue, if any, shall be held by Sublandlord and applied to the payment of other obligations of Port to Sublandlord as the same become due (with any remaining residue to be retained by Sublandlord).

ARTICLE 23 DEFAULT BY SUBLANDLORD; PORT REMEDIES

If Sublandlord shall fail to perform any term or provision under this Sublease required to be performed by Sublandlord, Sublandlord shall not be deemed to be in default hereunder nor subject to any claims for damages of any kind, unless such failure shall have continued for a period of thirty (30) days after Port delivers written notice thereof to Sublandlord; provided, however, if the nature of Sublandlord's failure is such that more than thirty (30) days are reasonably required in order to cure, Sublandlord shall not be in default if Sublandlord commences to cure such default within such thirty (30) day period, and thereafter diligently proceeds to cure such default to completion. The aforementioned periods of time permitted for Sublandlord to cure shall be extended for any period of time during which Sublandlord is delayed in, or prevented from, curing due to Force Majeure events (as defined in Article 31.E). If Sublandlord shall fail to cure within the times permitted for cure herein, Sublandlord shall be subject to such remedies as may be available to Port (subject to the other provisions of this Sublease). In recognition that Sublandlord must receive timely payments of Rent and operate the Building, except as otherwise provided in the Master Lease, Port shall have no right of self-help to perform repairs or any other obligation of Sublandlord, and shall have no right to withhold, set-off, or abate Rent, nor claim an actual or constructive eviction or disturbance of Port's use or possession of the Premises, unless, until and only to the extent that Port shall have obtained a valid judgment by a court of competent jurisdiction or as otherwise provided in the Master Lease.

ARTICLE 24
ATTORNEYS' FEES AND JURY TRIAL

If as a result of any breach or default by Port in the performance of any of the provisions of this Sublease, Sublandlord uses the services of an attorney to secure compliance with such provisions or recover damages therefor, or to enforce this Sublease or evict Port, Port shall reimburse Sublandlord on demand for any and all reasonable attorneys' fees and expenses so incurred by Sublandlord. Notwithstanding the foregoing, if either Sublandlord or Port fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Agreement, 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 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.

ARTICLE 25
NO WAIVER

No provision of this Sublease shall be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Sublease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and Sublandlord's consent or approval respecting any action by Port shall not constitute a waiver of the requirement for obtaining Sublandlord's consent or approval respecting any subsequent action. Acceptance of Rent by Sublandlord shall not constitute a waiver of any breach by Port of any term or provision of this Sublease. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Sublandlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the full amount due. The acceptance of Rent or of the performance of any other term or provision from any person other than Port, including any Transferee (as defined in Article 18), shall not constitute a waiver of Sublandlord's right to approve any Transfer (as defined in Article 18).

ARTICLE 26
CONVEYANCE BY SUBLANDLORD;
LIMITATIONS ON LIABILITY

A. Conveyance. In case Sublandlord or any subsequent sublandlord under the Master Lease duly assigns or subleases all or any portion of the Building which includes all or a portion of the Premises in accordance with the Master Lease, then any successor lessee under the Master Lease shall become sublandlord hereunder and such person shall be deemed to have fully assumed and be liable for all obligations of this Sublease to be performed by Sublandlord which first arise on or after the date of conveyance, including the return of any Security Deposit, and Port shall attorn to such other person. Sublandlord or such successor owner shall, from and after the date of transfer, be free of all liabilities and obligations hereunder not then incurred; provided, however, that such subsequent transferor assumes the covenants and obligations of Sublandlord hereunder. In no event shall Sublandlord (or such subsequent transferor) be relieved from liability incurred by Sublandlord (or such transferor, as the case may be) on account of covenants or obligations to be performed by Sublandlord (or such transferor, as the case may be) hereunder before the date of such transfer

B. Waiver of Consequential Damages. As a material part of the consideration for this Sublease, neither Port nor Sublandlord shall be liable for, and each party hereby waives any claim against the other for, any consequential damages arising out of any default by the other.

C. Limitation on Liability of Officers, Etc. Under no circumstances shall any present or future general or limited partner of Sublandlord or Port (other than Guarantor, if any) (if such party is a partnership), or trustee or beneficiary (if such party or any partner of such party is a trust) or any shareholder, member or officer (if such party is a corporation) have any liability for the performance of Sublandlord's or Port's obligations under this Sublease.

ARTICLE 27
ESTOPPEL CERTIFICATES

Either party shall execute, acknowledge and deliver to the other party (or at the other party's request, to any subtenant, prospective subtenant, prospective Mortgagee, or other prospective transferee of such party's interest under this Sublease), within fifteen (15) business days after a request, a certificate stating to the best of their knowledge (a) that this Sublease is unmodified and in full force and effect (or, if there have been modifications, that this Sublease is in full force and effect as modified, and stating the modifications or if this Sublease is not in full force and effect, so stating), (b) the dates, if any, to which Base Rent and other sums payable hereunder have been

paid, (c) whether or not, to the knowledge of the party, there are then existing any defaults under this Sublease (and if so, specifying the same) and (d) any other matter actually known to such party, directly related to this Sublease and reasonably requested by the requesting Party. In addition, if requested, the requested party shall attach to such certificate a copy of this Sublease and any amendments thereto, and include in such certificate a statement that, to the best of the party's knowledge, such attachment is a true, correct and complete copy of this Sublease, including all modifications thereto. Any such certificate may be relied upon by the requesting party or any subtenant, prospective Subtenant, prospective Mortgagee, or other prospective transferee of the requesting party's interest under this Sublease.

ARTICLE 28 REAL ESTATE BROKERS

Each party represents that it has not dealt with any brokers, as broker, agent or finder in connection with this Sublease. Each party agrees to hold the other party harmless from all damages, judgments, liabilities and expenses (including reasonable attorneys' fees) arising from any claims or demands of any broker, agent or finder based upon any acts of the other party for any commission or fee alleged to be due in connection with this Sublease.

ARTICLE 29 NOTICES

Except as expressly provided to the contrary in this Sublease, every notice or other communication to be given by either party to the other with respect hereto or to the Premises or the Building shall be in writing and shall not be effective for any purpose unless the same shall be served personally or by national air courier service, or by United States certified mail, return receipt requested, postage prepaid, addressed, if to Port, at the address set forth in the Basic Sublease Information, and if to Sublandlord, at the address set forth in the Basic Sublease Information, or such other address or addresses as Sublandlord and Port may from time to time designate by notice given as above provided. Every notice or other communication hereunder shall be deemed to have been given as of the third business day following the date of such mailing (or as of any earlier date evidenced by a receipt from such national air courier service or United States Postal Service) or immediately if personally delivered. Notices not sent in accordance with the foregoing shall be of no force or effect until received by the foregoing parties at such addresses required herein.

**ARTICLE 30
ENTIRE AGREEMENT**

This Sublease, together with the Master Lease and Development Agreement, and all Exhibits hereto (which collectively are hereby incorporated where referred to herein and made a part hereof as though fully set forth), contains all the terms and provisions between Sublandlord and Port relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect. Neither this Sublease, nor the Exhibits referred to above, may be modified except in writing signed by both parties. Nothing herein is intended to limit the obligations and duties of the parties set forth in the Master Lease. In the event of a conflict between the Master Lease and this Sublease, the Master Lease shall control. Obligations of Sublandlord, as tenant under the Master Lease, that are contractually passed through to Port hereunder will not be construed as conflicts herewith.

**ARTICLE 31
MISCELLANEOUS**

A. **Binding.** Each of the terms and provisions of this Sublease shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, guardians, custodians, successors and assigns, subject to the provisions of Article 18 respecting Transfers.

B. **Survival.** All obligations or rights of either party arising during or attributable to the period ending upon expiration or earlier termination of this Sublease shall survive such expiration or earlier termination.

C. **Quiet Enjoyment.** Sublandlord agrees that, if Port timely pays the Base Rent and performs the terms and provisions hereunder, and subject to all other terms and provisions of this Sublease, Port shall hold and enjoy the Premises during the Term, free of lawful claims by any person acting by or through Sublandlord.

D. **Light/Air Easements.** This Sublease does not grant any legal rights to "light and air" outside the Premises nor any particular view or city scape visible from the Premises.

E. **Force Majeure.** Neither Sublandlord nor Port shall be chargeable with, liable for, or responsible to the other or to any other person for any delay in the performance of any act required hereunder (other than the payment of Rent) when such delay is caused by fire or other casualty, strikes, lockouts or other labor disturbances, shortages of equipment or materials, governmental requirements, power shortages or

outages, acts or omissions of the other party to this Sublease, or other causes beyond the reasonable control of Sublandlord or Port, as the case may be (collectively, "Force Majeure"), and any delay due to said causes or any of them shall not be deemed a breach of or default in the performance of this Sublease, it being specifically agreed that any time limit for such party's performance contained in this Sublease shall be extended for the same period of time and to the extent of delay resulting from causes hereinabove set forth.

F. No Third Party Beneficiaries. This Sublease shall not, nor be deemed to, confer upon any person or entity, other than the parties hereto, any right or interest, including without limitation any third-party beneficiary status or any right to enforce any provision of this Sublease.

G. Time of the Essence. Time is hereby expressly declared to be of the essence of this Sublease and of each and every term, covenant, agreement, condition and provision of it. Unless work or business days are specified, references to "days" in this Sublease refer to calendar days.

H. Applicable Law. Unless otherwise specified herein, the applicable laws of the State of California shall govern the validity, construction and effect of this Sublease.

I. Termination Not Merger. Except in the event of a termination hereof concurrent with the termination of the Master lease or except in the event Port purchases the Premises pursuant to Article 5(C) above, the voluntary sale or other surrender of this Sublease by Port to Sublandlord, or a mutual cancellation of it, or the termination of it by Sublandlord under any provision, shall not work a merger, but at Sublandlord's option shall either terminate any or all existing subleases or subtenancies hereunder, or operate as an assignment to Sublandlord of any or all such subleases or subtenancies.

J. No Partnership Or Joint Venture. Sublandlord is not for any purpose a partner or joint venturer of Port in the development or operation of the Premises or in any business conducted on the Premises. Sublandlord shall not under any circumstances be responsible or obligated for any losses or liabilities of Port.

K. Approvals. Unless otherwise provided herein, all approvals and consents required of Sublandlord hereunder shall not be unreasonably withheld or delayed. If Port believes Sublandlord has unreasonably withheld or delayed giving approval or consent, Port's sole and exclusive remedy shall be to request a court of competent jurisdiction to grant injunctive relief to compel Sublandlord to grant such approval or consent, and Port expressly waives any and all rights it may have, now or in the future, to bring an action or make a claim for any other relief, including without

limitation declaratory judgment, damages or other monetary relief including, but not limited to, punitive damages.

L. Captions. The captions of the Articles and paragraphs of this Sublease are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation.

M. Severability. If any term or provision of this Sublease shall be found invalid, void, illegal, or unenforceable with respect to any particular person by a court of competent jurisdiction, it shall not affect, impair or invalidate any other terms or provisions hereof, or its enforceability with respect to any other person, the parties hereto agreeing that they would have entered into the remaining portion of this Sublease notwithstanding the omission of the portion or portions adjudged invalid, void, illegal, or unenforceable with respect to such person.

N. Counterparts. This Sublease may be executed in any number of counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document.

O. City Requirements.

1. **MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Sublandlord acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

2. **Controller's Certification of Funds.**

a. The terms of this Sublease shall be governed by and subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco. Notwithstanding anything to the contrary contained in this Sublease, there shall be no obligation for the payment or expenditure of money by Port under this Sublease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the Charter of the City and County of San Francisco, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year after the fiscal year

in which the Term of this Sublease commences, sufficient funds for the payment of Base Rent, Port's Pro Rata Share of Operating Expenses and Taxes and any other payments required under this Sublease are not appropriated for any reason, then Port may terminate this Sublease, without penalty, liability or expense of any kind to Port (except as provided in Article 31.O.2.c. below), as of the last date on which sufficient funds are appropriated. Port shall deliver to Sublandlord advance notice of such termination within two (2) business days after the decision not to appropriate funds is made.

b. Port agrees that it will not fail to seek appropriation of sufficient funds for the payment of Base Rent and any other payments required under this Sublease. Port further agrees that it will not seek appropriation of funds for the purchase, occupancy, improvement or rental of space other than the Premises in which Port will conduct the operations then being conducted by Port in the Premises.

c. Notwithstanding anything to the contrary herein, Sublandlord shall have the right to offset against its rental obligations under the Master Lease as they become due all damages, costs and expenses, including, without limitation reasonable attorneys' fees, rental due and unpaid, and Costs of Reletting incurred by Sublandlord as a result of termination of this Sublease or the Port's failure to perform its obligations hereunder as a result of the failure by the Controller of the City and County of San Francisco to certify that there is a valid appropriation from which to pay the Base Rent, Port's Pro Rata share of Operating Expenses and Taxes, and all other sums payable by Port hereunder, and that unencumbered funds are available from the appropriation to pay such sums. Sublandlord agrees to use reasonable efforts to mitigate such damages, costs and expenses by reletting the Premises in a timely manner.

3. Prevailing Wages for Construction Work. Sublandlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises which Sublandlord provides under this Sublease shall be paid not less than the highest prevailing rate of wages and that Sublandlord shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Sublandlord further agrees that, as to the construction of such improvements under this Sublease, Sublandlord shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Sublandlord shall require any contractor to provide, and shall deliver to Port every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

4. Non Discrimination in City Contracts and Benefits Ordinance.

a. Covenant Not to Discriminate. In the performance of this Sublease, Sublandlord 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) against any employee or, any City employee working with, or applicant for employment with, Sublandlord in any of Sublandlord's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Sublandlord.

b. Subcontracts. Sublandlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Sublandlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Sublandlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

c. Non-Discrimination in Benefits. Sublandlord does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits specified above within the United States, between employees with domestic partners and employees with spouses, and/or between 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 condition set forth in Section 12.B2(b) of the San Francisco Administrative Code.

d. Condition to Sublease. As a condition to this Sublease, Sublandlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Sublandlord hereby represents that prior to execution of the Sublease: (i) Sublandlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Sublease as though fully set forth herein. Sublandlord shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Sublandlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Sublandlord and/or deducted from any payments due Sublandlord.

5. Tropical Hardwood and Virgin Redwood Ban. (a) Except as expressly permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, neither Sublandlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Sublease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. (b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product. (c) In the event Sublandlord fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Sublandlord shall be liable for liquidated damages for each violation in an amount equal to Sublandlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Sublandlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Sublandlord from any contract with the City and County of San Francisco.

6. Bicycle Storage Facilities. Article 1.5 of the San Francisco Planning Code ("Code") requires the provision of bicycle storage at City leased buildings at no cost to Sublandlord and if funds are available. In the event public and/or private donations, grants or other funds become available, at any time during the Sublease or any extension thereof, City may, by giving a 60-day advanced written notice to Sublandlord, install up to two parking stalls in an area in front of the Building which meets the Class 1 and/or Class 2 requirements of the Code to accommodate such bicycle storage. Sublandlord, at no cost to Sublandlord, shall reasonably cooperate with City regarding the implementation of this Code.

P. Proximity of Mid-Embarcadero Projects. Port acknowledges that during the Term, the Waterfront Transportation Project involving (by way of example only and not of limitation) the realignment of the Embarcadero Roadway,

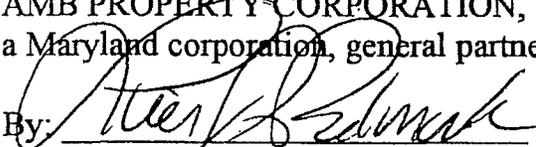
Mid-Embarcadero freeway replacement, construction of a MUNI-metro turnaround project, MUNI-metro extension, F-line historic streetcar line, and a waterfront promenade, is scheduled to be constructed on property in the immediate vicinity of the Premises. In addition, Port is undertaking the Ferry Terminal project, the renovation of the Ferry Building and improvements to Pier 1. Hornblower Yachts, Inc. or another tenant may also undertake improvements to Piers 1, 1½, 3 and 5 pursuant to leases with Port. Port is aware that the construction of such projects and the activities associated with such construction will generate certain adverse impacts that may result in some inconvenience to or disturbance of Port. Such impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Port hereby waives any and all claims (including, without limitation, a claim for abatement or reduction of Rent) against Sublandlord arising out of such inconvenience or disturbance.

IN WITNESS WHEREOF, the parties have executed this Sublease as of the day and year first above written.

SUBLANDLORD:

AMB PROPERTY, L.P.
a Delaware limited partnership

By: AMB PROPERTY CORPORATION,
a Maryland corporation, general partner

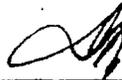
By: 
Luis A. Belmonte,
Managing Director

[Signatures continued on the next page]

PORT:

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

By



Douglas F. Wong
Executive Director

APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

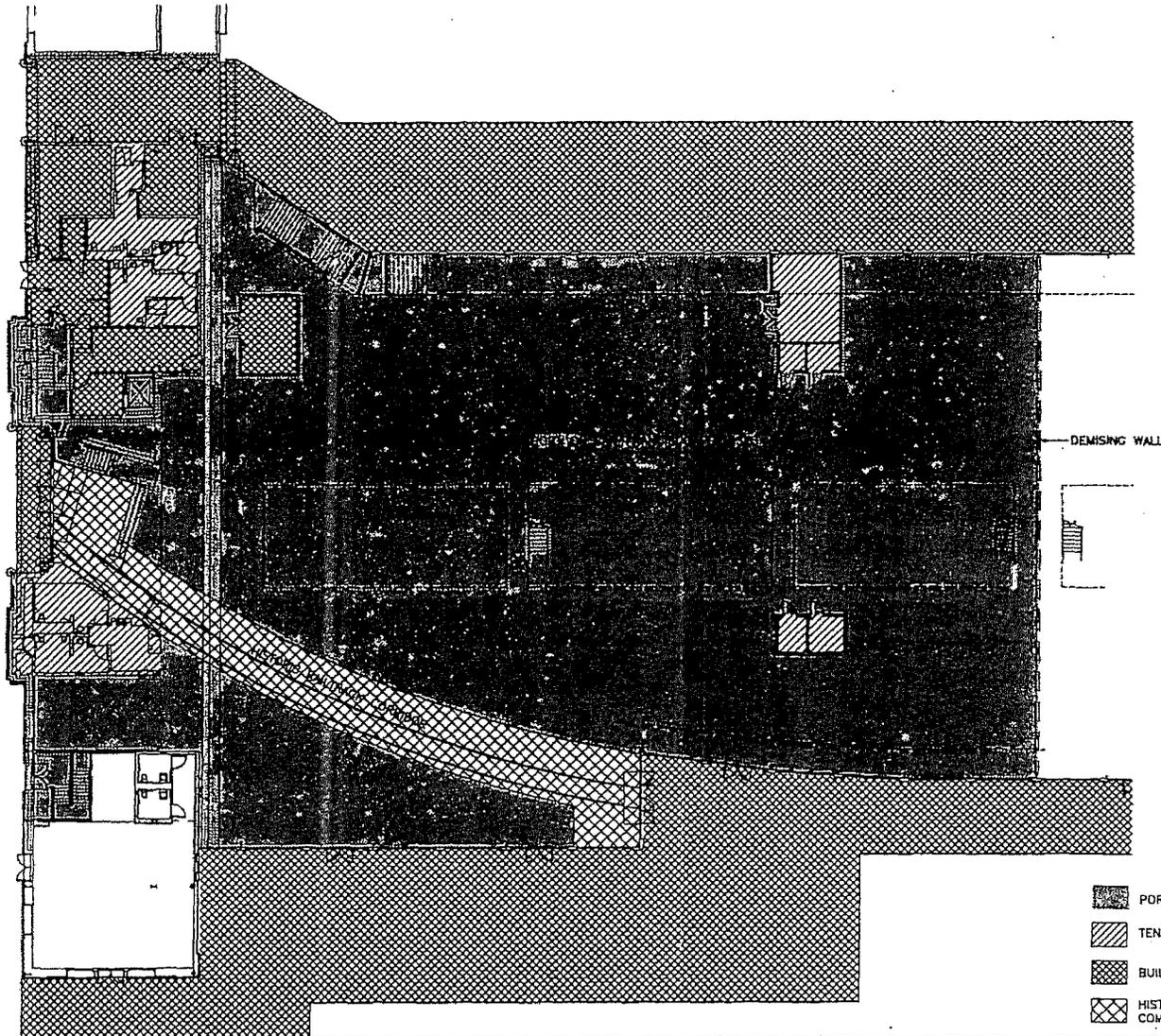
By



Neil H. Sekhri
Assistant Port General Counsel



THE EMBARCADERO



-  PORT OF SF USABLE AREA
-  TENANT SERVICE AREAS
-  BUILDING COMMON AREAS
-  HISTORIC RAILTRACK CORRIDOR COMMON AREA

PIER 1

THE EMBARCADERO - SAN FRANCISCO

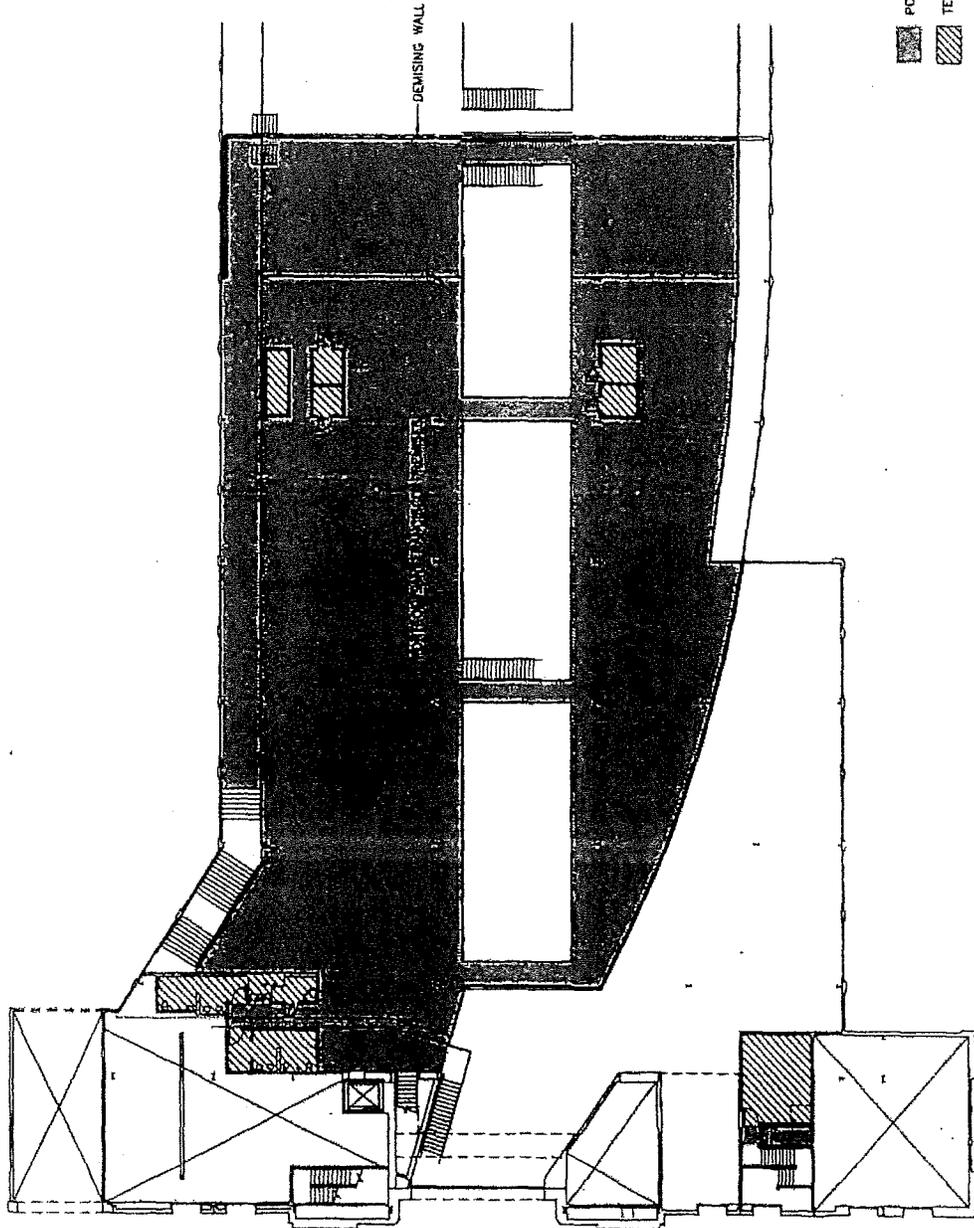
Sublandlord:
AMA PROPERTY, L.P.

Subtenant:
PORT OF SAN FRANCISCO

8-2-99

 **GROUND FLOOR**
NOT TO SCALE

EXHIBIT A
SITE MAP
Page 1

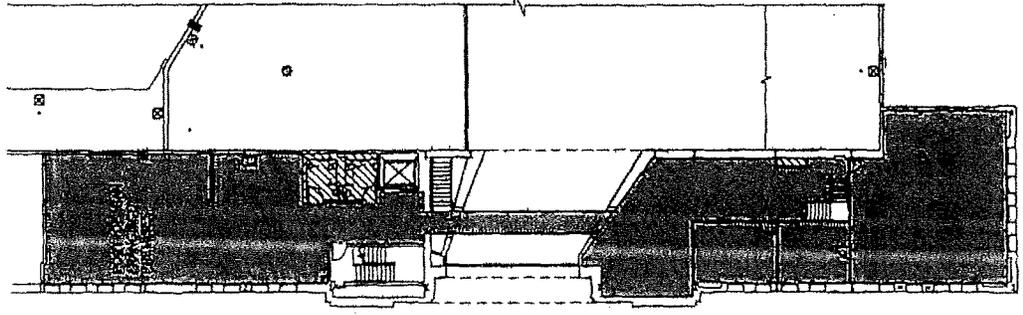


 PORT OF SF USABLE AREA
 TENANT SERVICE AREAS

EXHIBIT A
SECOND FLOOR
SITE MAP
 BAYFRONT

BAYFRONT
 AND TOWNSHIP, L.P.
 PORT OF SAN FRANCISCO
 P-2-M

PIER 1
 THE EMBARCADERO - SAN FRANCISCO



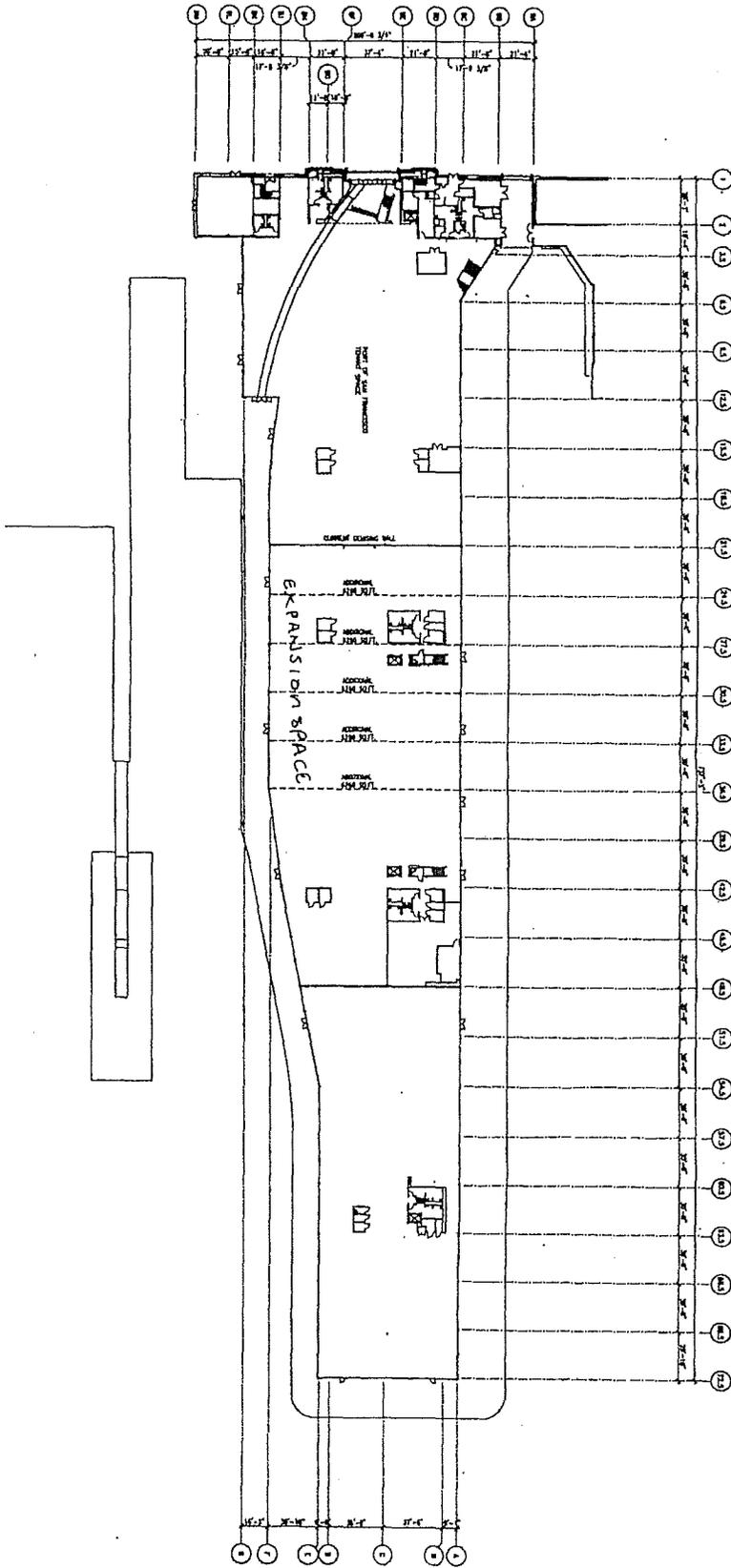
 PORT OF SF USABLE AREA
 TENANT SERVICE AREAS

EXHIBIT A
SECOND FLOOR BULKHEAD SITE MAP
NOT TO SCALE

PREPARED BY:
 AND PROPERTY, L.P.
 PART OF SAN FRANCISCO
 4-1-08

PIER 1
 THE EMERALD GARDENS - SAN FRANCISCO

PIER 1
THE EMBARCADERO - SAN FRANCISCO



Expansion Space
EXHIBIT A-1

SCALE: 1" = 30'-0"
 ARCHITECT: SIMON MARTINEZ
 ENGINEER: WINTERSTEIN MORRIS
 CONSULTANT: A&P PROPERTY CONSULTANTS

Expansion Space
EXHIBIT A-1

EXHIBIT B
WORK LETTER

This Work Letter is an Exhibit to the Sublease dated as of August 2, 1999 (referred to herein for convenience as the "Sublease") executed concurrently herewith by and between AMB Property, L.P., a Delaware limited partnership ("Sublandlord") and the City and County of San Francisco acting by and through the San Francisco Port Commission ("Port"). All capitalized terms not otherwise defined herein shall have the same meanings given them in the Sublease.

I. Dates and Allowance.

Schematic Plan Information

Date: August 12, 1999

Schematic Plan Completion

Date: August 20, 1999

Schematic Plan Review

Completion Date: October 1, 1999

Design Development Plan

Information Date: October 4, 1999

Design Development Plan

Completion Date: November 1, 1999

Design Development Plan

Review Completion Date: December 10, 1999

Construction Documents

Information Date: December 13, 1999

Construction Documents

Completion Date: February 14, 2000

Construction Documents

Review Completion Date: March 27, 2000

Scheduled Date to Substantially

Complete the Work: December 1, 2000.

Allowance:

Forty and no/100 Dollars (\$40.00) per square foot of rentable area within the Premises (i.e., \$2,099,000.00), as further described in Section IV(c).

II. Construction Representatives, Architect and Engineer. Sublandlord's and Port's construction representatives for coordination of planning, construction, approval of change orders, substantial and final completion, and other such matters (unless either party changes its representative upon written notice to the other), and the other parties involved in planning the Work, are:

Sublandlord's Representative:

Janice Thacher

Address:

AMB Property Corporation
505 Montgomery Street
San Francisco, CA 94111

Telephone:

(415) 394-9000

Fax:

(415) 394-9001

Port's Representative:

Mary Hanni Ilyin

Address:

San Francisco Port Commission
3100 Ferry Building
San Francisco, CA 94111
(Reference: Pier 1)

Telephone:

(415) 274-0594

Fax:

(415) 274-0551

Architect:

Simon Martin Vegue Winkelstein Morris

Architect Representative:

Carol Kranhold-Ames

Engineer:

One or more California licensed engineers approved or designated by Sublandlord in writing.

III. Plans. The term "Plans" herein shall collectively refer to the Schematic Plan (described below), the Design Development Plan (described below) and the Construction Documents (described below). The phases resulting in the production of such Plans are identified and described in the "Scope of Architect's Work" attached hereto as Appendix I. Port has sole responsibility to provide all information concerning its planning requirements to the Architect by the dates set forth herein. Such dates are critical and of the essence hereof with respect to contracting out the Work (as defined in

Section IV(a)), obtaining permits, and achieving substantial completion by the Commencement Date. The commencement of Base Rent and all other rent due under the Sublease (collectively referred to herein as "Rent") shall not be postponed based on any delays in planning except to the extent expressly provided below. The Plans shall be signed or initialed by Port, if requested by Sublandlord, and shall be prepared and approved in accordance with the following provisions:

(a) Schematic Plan. By the Schematic Plan Information Date, Port shall provide Architect with all information concerning Port's requirements in order for Architect to prepare the Schematic Plan. Such information includes, but is not limited to, Port's requirements for special mechanical/HVAC system; electrical and emergency power; telephone and data; conceptual power distribution and circuiting requirements for systems furniture (Port is providing its own systems furniture); lighting; security system; conceptual keying and hardware; special products or proprietary equipment and any other special requirements. Architect has provided to Port a questionnaire specifying the information required. "Schematic Plan" herein means floor plans, conceptual typical furniture and equipment plans, reflected ceiling plans and selected interior elevations, drawn to scale, showing (i) demising walls and other interior partitions, (ii) doors and other interior and exterior openings, and (iii) an approach to interior finishes, materials and built-in furniture.

(b) Design Development Plan. By the Design Development Plan Information Date, Port shall provide Architect with all information concerning Port's requirements in order for Architect to prepare the Design Development Plan. "Design Development Plan" herein means a floor plan, drawn to scale, showing (i) demising walls, interior walls and other partitions, including type of wall or partition and height, (ii) doors and other openings in such walls or partitions, including type of door and hardware, (iii) any floor or ceiling openings, and any variations to building standard floor or ceiling heights, (iv) electrical outlets, restrooms, kitchens, computer rooms, file cabinets, file rooms and other special purpose rooms, and any sinks or other plumbing facilities, or other special electrical, HVAC, plumbing or other facilities or equipment, including all special loading but excluding Port's furniture, fixtures and equipment, (v) communications system, including location and dimensions of equipment rooms, and telephone and computer outlet locations, (vi) special cabinet work or other millwork items, (vii) any planning considerations under the Disabilities Acts, (viii) all finish selections (e.g., color selection of painted areas, and selection of floor and any special wall coverings from Sublandlord's available building standard selections (which selections Port may defer until the Construction Documents Information Date, and (ix) any other details or features reasonably required in order to obtain a preliminary cost estimate as described in Section IV or otherwise reasonably requested by Architect, Engineer or Sublandlord in order for the Design Development Plan to serve as a basis for preparing the Construction Documents. Sublandlord shall instruct the Architect to complete the Design Development Plan by the Design Development Plan Completion Date.

(c) Construction Documents. By the Construction Documents Information Date, Port shall provide all information concerning Port's requirements in order for the Architect and Engineer to prepare the Construction Documents. "Construction Documents" herein means fully dimensioned architectural construction drawings and specifications, and any required engineering drawings (including mechanical, electrical, plumbing, air-conditioning, ventilation and heating), and shall include any applicable items described above for the Schematic Plans or the Design Development Plan, and to the extent applicable: (i) electrical outlet locations, circuits and anticipated usage therefor (ii) telephone and computer outlet locations, (iii) reflected ceiling plan, including lighting, switching, and any special ceiling specifications, (iv) duct locations for heating, ventilating and air-conditioning equipment, (v) details of all millwork, (vi) dimensions of all equipment and cabinets to be built in, (vii) conceptual furniture and equipment plans for the purpose of determining locations of telephone, data and electrical outlets, (viii) keying schedule, (ix) lighting arrangement, (x) location of print machines, equipment in lunch rooms, concentrated file and library loadings and any other equipment or systems (with brand names wherever possible) which require special consideration relative to air-conditioning, ventilation, electrical, plumbing, structural, fire protection, life-fire-safety system, or mechanical systems, (xi) special heating, ventilating and air conditioning equipment and requirements, (xii) weight and location of heavy equipment, and anticipated loads for special usage rooms, (xiii) demolition plan, (xiv) Port's exterior tenant signage and signage required for safety and emergency evacuation, (xv) partition construction plan, (xvi) all requirements under the Disabilities Acts and other governmental requirements, and (xvii) final finish selections, and any other details or features reasonably required in order to obtain a final cost estimate as described in Section IV or otherwise reasonably requested by Architect, Engineer or Sublandlord in order for the Construction Documents to serve as a basis for contracting the Work. Sublandlord shall instruct the Architect and Engineer to complete the Construction Documents by the Construction Documents Completion Date.

(d) Approval of Plans.

(i) Port's Approval. Following completion of each of the Plans (Schematic Plan, Design Development Plan and Construction Documents), Port shall approve the same in writing by the later of the Review Completion Date for that Plan set forth in Section I or the date that is four (4) weeks after Port's receipt of the initial cost estimate for that Plan.

(ii) Sublandlord's Approval.

Sublandlord shall either approve any Plans or revisions submitted pursuant hereto or disapprove of the same with suggestions for making the same acceptable. Sublandlord shall not unreasonably withhold approval if the Plans provide for a customary office layout (subject to the particular requirements of a public agency

open to the public and its meeting functions), with finishes and materials generally conforming to building standard finishes and materials being used by Sublandlord at the Building, are compatible with the Building's shell and core construction, and if no material modifications will be required for the Building electrical, heating, air-conditioning, ventilation, plumbing, fire protection, life-fire-safety, or other systems or equipment, and will not require any structural modifications to the Building, whether required by heavy loads or otherwise. Sublandlord shall request that Port approve Sublandlord's suggested changes in writing (such approval shall not be unreasonably withheld), or Sublandlord shall arrange directly with the Architect for revised Plans to be prepared incorporating such suggestions (in which case, Port shall sign or initial the revised Plans and/or Sublandlord's notice concerning the suggested changes, if requested by Sublandlord). Sublandlord's approval of the Plans shall not be deemed a warranty as to the adequacy or legality of the design, and Sublandlord hereby disclaims any responsibility or liability for the same.

(e) Governmental Approval of Plans. Sublandlord shall cause its contractor to apply for building permits required for the Work which are issued pursuant to applicable law. If the Plans must be revised in order to obtain such building permits, Sublandlord shall promptly notify Port. In such case, Sublandlord shall promptly arrange for the Plans to be revised to satisfy the building permit requirements and shall submit the revised Plans to Sublandlord and Port for approval as a Change Order under Section III(f). Except as set forth in the Development Agreement, Sublandlord shall have no obligation to apply for any zoning or parking amendments, approvals, permits or variances, or any other governmental approval, permit or action (except building permits as described above). If any such other matters are required, Port shall promptly seek to satisfy such requirements or request the Planner to revise the Plans to eliminate such requirements. Delays in substantially completing the Work by the Commencement Date as a result of requirements for building permits or other governmental approvals, permits or actions shall affect the Commencement Date and commencement of Rent only to the extent provided in Section V.

(f) Changes After Plans Are Approved. If Port desires any changes, alterations, or additions to the Plans after they have been approved by Port and Sublandlord, Port shall submit a detailed written request or revised Plans (the "Change Order") to Sublandlord for approval. If reasonable and practicable and generally consistent with the Plans theretofore approved, Sublandlord shall not unreasonably withhold approval, but all costs in connection therewith, including, without limitation, construction costs, permit fees, and any additional plans, drawings and engineering reports or other studies or tests, or revisions of such existing items, shall be paid for by Port as provided under Section IV. Sublandlord agrees to obtain a written cost estimate from Sublandlord's contractor for any Change Order requested by Port. Port shall review and give written approval of all Change Orders. No work shall commence on said Change Order without Port's prior written consent to the cost thereof, which approval

shall not be unreasonably withheld. Port shall either approve or disapprove any cost estimate for a Change Order within three (3) business days after Port's receipt thereof. Any disapproval shall include Port's specific reasons for such disapproval. The cost of any corrections for errors or omissions made by the Architect or any architect, engineer or contractor engaged in connection with the Work, including corrections for unforeseen or concealed conditions, shall be borne by Port.

(g) Planning for Disabilities Acts. Port shall be responsible for matters under any laws or governmental regulations, rules or guidance materials pertaining to persons with disabilities, including without limitation the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, and any similarly motivated state and local laws, as the same may be amended and supplemented from time to time (collectively referred to herein as the "Disabilities Acts"), relating to the Premises or improvements thereto. Without limiting the generality of the forgoing, Port shall: (a) provide complete and accurate information such that the Plans will comply with the Disabilities Acts, and update such information as needed, and (b) be responsible for any changes to the Work or Premises resulting from changes in Port's employees, business operations or the Disabilities Acts. Without limitation as to other provisions, Port hereby expressly acknowledges that Port's indemnity and related obligations under the Sublease shall apply to violations of this provision.

IV. Cost of the Work, Allowance and Port's Cost.

(a) Cost of the Work. Except for the Allowance to be provided by Sublandlord hereunder, Port shall pay the entire cost (herein referred to as the "Cost of the Work") for or related to: (1) the Work, including, without limitation, costs of labor, hardware, equipment and materials, contractors' charges for overhead and fees, and so-called "general conditions" (including rubbish removal, utilities, freight elevators, hoisting, field supervision, building permits, occupancy certificates, inspection fees, utility connections, bonds, insurance, sales taxes, and the like), and (2) the Plans, including, without limitation, all revisions thereto, and engineering reports, or other studies, reports or tests, air balancing or related work in connection therewith. "Work" herein means: (i) the improvements and items of work shown on the final approved Plans (including changes thereto approved by Sublandlord), and (ii) any changes to the Base Building Improvements (defined below) required in connection therewith, including without limitation, structural or mechanical work, additional HVAC equipment or sprinkler heads, or modifications to any building mechanical, electrical, plumbing or other systems and equipment, either within or outside the Premises required as a result of the layout, design, or construction of the Work or in order to extend any mechanical distribution, fire protection or other systems from existing points of distribution or connection, or in order to obtain building permits for the work to be performed within the Premises (unless Sublandlord requires that the Plans be revised to eliminate the necessity for such work). Work shall exclude the "Base Building Improvements" described in

Appendix II hereto, which shall be constructed by Sublandlord at Sublandlord's sole expense pursuant to the Development Agreement.

(b) Allowance. Sublandlord shall make the Allowance available towards: (1) costs of permanent leasehold improvements included in the Work, including labor, hardware, equipment and materials, contractors' charges for overhead and fees, and general conditions, and (2) costs of the Plans (and which shall exclude planning for furniture, fixtures and equipment). If all or any portion of the Allowance shall not be used, Sublandlord shall be entitled to the savings and Port shall receive no credit therefor.

(c) Port's Cost; Estimates and Payments. Any portion of the Cost of the Work exceeding the Allowance is referred to herein as "Port's Cost." Sublandlord shall advance to Port the Port's Cost up to \$25.00 per rentable square foot of the Premises (the "Maximum Improvement Cost Advance"). Port shall repay to Sublandlord the amount of Port's Cost advanced by Sublandlord hereunder (the "Improvement Cost Advance") in one hundred eighty (180) monthly installments amortized at an annual interest rate of nine percent (9%). Such installments shall constitute Rent under the Sublease and shall be paid concurrently with the payment of Base Rent, commencing on the first day of the second month following the Commencement Date. Interest shall begin to accrue on the Improvement Cost Advance as of the Commencement Date. If the Sublease is terminated prior to repayment of the Improvement Cost Advance, the unpaid principal of the Improvement Cost Advance and any unpaid accrued interest thereon shall be accelerated and due in full upon such termination. Sublandlord may at any time estimate Port's Cost in advance, or revise any such estimate, in which case, Port shall either deposit any estimated amount in excess of the Maximum Improvement Cost Advance with Sublandlord within thirty (30) days after Sublandlord so requests, or process a Change Order(s) in accordance with Section III(f) hereof in order to reduce Port's Cost to a level not to exceed the Maximum Improvement Cost Advance. If, after final completion and payment for the Work, the actual amount of Port's Cost in excess of the Improvement Cost Advance exceeds the amount deposited by Port, Port shall pay the difference to Sublandlord within thirty (30) days after Sublandlord so requests. Any unused funds deposited by Port shall promptly be refunded.

(d) Port's Approval of Cost. Sublandlord shall obtain and submit to Port for Port's approval two cost estimates -- one for the Work based on the Schematic Plan and one for the Work based on the Design Development Plan. Port shall not unreasonably withhold its approval of such cost estimates, and shall approve in writing each said cost estimate or a revision thereof by the later of the Review Completion Date for that Plan, as set forth in Section I, or the date that is four (4) weeks after Port's receipt of the initial cost estimate for that Plan. Any cost estimates based on a Schematic Plan or a Design Development Plan will be preliminary in nature, and may not be relied on by Port. Sublandlord shall thereafter obtain and submit to Port for Port's approval a price bid for the cost of the Work from Sublandlord's contractor based on the Construction

Documents. Port shall not unreasonably withhold its approval of such bid, and shall approve such bid or a revision thereof in writing by the later of the Construction Documents Review Completion Date as set forth in Section I or the date that is four (4) weeks after the Port's receipt of the initial cost estimate for the Construction Documents. If Port reasonably disapproves of any such estimate or bid, Port shall meet with the Architect and eliminate or substitute items in order to reduce Port's Cost, but the foregoing dates to complete the Plans, to complete review of the Plans and to approve the cost of the Work shall not be extended thereby. Any such elimination or substitution of items shall be processed as Change Order(s) pursuant to Section III(f).

V. Construction.

(a) Sublandlord to Arrange Work. Sublandlord shall use reasonable efforts to cause Architect to complete the Plans on time and Sublandlord's contractor to substantially complete the Work by the Commencement Date, and provided that Port deposits with Sublandlord an amount equal to the amount, if any, by which Sublandlord's estimate of Port's Cost exceeds the Improvement Cost Advance as provided above, and is not then in violation of the Sublease (including this exhibit).

(b) Status Reports: Inspections. Sublandlord shall keep Port apprised of the status of permit approval and the progress of construction. Port may enter the Premises during the construction of the Work at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Sublandlord or its representative may accompany Port during any such inspection.

(c) Substantial Completion. Sublandlord shall be deemed to have "substantially completed" the Work for purposes hereof if (i) any approvals necessary for Port to legally take occupancy of the Premises have been issued by the appropriate governmental authority and (ii) Sublandlord has caused all of the Work to be completed substantially in accordance with the Plans except for so-called "punch list items"; e.g., minor details of construction or decoration or mechanical adjustments which do not substantially interfere with the conduct of Port's business in the Premises or Port's ability to complete any improvements to the Premises to be made by Port. If there is any dispute as to whether Sublandlord has substantially completed the Work, the good faith decision of Architect shall be final and binding on the parties. If Sublandlord notifies Port in writing that the Work is substantially completed, and Port fails to object thereto in writing within ten (10) days thereafter specifying in reasonable detail the items of Work needed to be performed in order for substantial completion, Port shall be deemed conclusively to have agreed that the Work is substantially completed, for purposes of the Commencement Date and Rent under the Sublease.

Any items not specifically identified and quantified on the Plans shall be installed by Sublandlord in accordance with building standard and any upgrade therefrom shall be deemed a change and shall be subject to the provisions of Section III(f).

(d) Walk Through and Final Completion. Substantial completion shall not prejudice Port's rights to require full completion of any remaining items of Work, which Sublandlord shall use reasonable efforts to complete promptly after substantial completion has occurred. When Sublandlord notifies Port that the Work has been substantially completed, either party may request a joint walk-through inspection in order for Port to identify any necessary "punch-list" items, and such walk-through shall occur not later than ten (10) business days after the first such request. Neither party shall unreasonably withhold approval concerning such items. Port shall deliver to Sublandlord its final punch list within fifteen (15) business days after such walkthrough. If Sublandlord thereafter notifies Port in writing that the Work is fully completed, and Port fails to object thereto in writing within ten (10) business days thereafter specifying in detail the items of work needed to be completed and the nature of work needed to complete said items, Port shall be deemed conclusively to have accepted the Work as fully completed (or such portions thereof as to which Port has not so objected). As part of the Work, Sublandlord: (1) shall cause building standard suite identification signage, and building standard window blinds, to be installed (to the extent not already existing), and (2) shall cause a contractor to perform air balancing tests on the Premises and adjust the HVAC system as a result thereof. The costs of such items shall be charged against the Allowance, and if the Allowance shall be insufficient, then to the Improvement Cost Advance, and if both shall be insufficient, Port shall pay Sublandlord for such costs pursuant to Section IV(c).

(e) Port Delays. If the Work is not substantially completed by the Commencement Date, commencement of Base Rent and Port's Pro Rata Share of Operating Expenses and Taxes shall be postponed to the extent that Port is unable to use the Premises as a result, except to the extent that delays occur as a result of one or more of the following events (collectively called "Port Delays"): (1) Port's failure to comply with the Schematic Plan Information Date or the Schematic Plan Review Completion Date, (2) Port's failure to comply with the Design Development Plan Information Date or the Design Development Plan Review Completion Date, (3) Port's failure to comply with the Construction Documents Information Date or the Construction Documents Review Completion Date, (4) Port's request for planning work beyond the "Scope of Architect's Work" described in Appendix I hereto, (5) changes requested by Port pursuant to Section III(f) and revisions by Port to reduce Port's Cost pursuant to Section IV if such revisions are made after the Review Completion Date, (6) Port's requests for changes to the Work or Change Orders under Section III, or otherwise, whether or not approved by Sublandlord, (7) Port's failure to approve estimates or bids of Port's Cost or Port's failure to either furnish an amount equal to Sublandlord's estimate of Port's Cost in excess of the Maximum Improvement Cost Advance within the time required under Section IV or

process change orders under Section III to reduce Port's Cost to a level not exceeding the Maximum Improvement Cost Advance (which shall give Sublandlord the absolute right to postpone or suspend the Work until such amount is furnished to Sublandlord or until the Change Order(s) reduce(s) Port's Cost, without limiting Sublandlord's other remedies), (8) any upgrades, special work or other non-building standard items, or items not customarily provided by Sublandlord to office tenants, to the extent that the same involve longer lead times, installation times, delays or difficulties in obtaining building permits, requirements for any governmental approval, permit or action beyond the issuance of normal building permits (as described in Section III), or other delays not typically encountered in connection with Sublandlord's standard office improvements, (9) the performance by Port or Port's contractors, agents or employees of any work at or about the Premises or Building, or (10) any act or omission of Port or Port's contractors, agents or employees, or any breach by Port of any provisions contained in the Sublease, or any failure of Port to cooperate with Sublandlord or otherwise act in good faith in order to cause the Work to be designed and performed in a timely manner. Notwithstanding the occurrence of Port Delays, however, in no event shall Port's obligation to pay Base Rent or Port's Pro Rata Share of Operating Expenses and Taxes commence prior to the commencement of Sublandlord's obligation under Section 2.3 of the Master Lease to pay Minimum Rent (as that term is defined in the Master Lease) with respect to the Port's Premises.

(f) Sublandlord's Role. The parties acknowledge that neither Sublandlord nor its managing agent is an architect or engineer, and that the Work will be designed and performed by independent architects, engineers and contractors. Sublandlord and its managing agent shall have no responsibility for construction means, methods or techniques or safety precautions in connection with the Work, and do not guarantee that the Plans or Work will be free from errors, omissions or defects, and shall have no liability therefor. In the event of such errors, omissions or defects, Sublandlord shall cooperate in any action Port desires to bring against such parties. Sublandlord shall use commercially reasonable efforts to provide that all warranties or guarantees as to materials or workmanship with respect to the Work which are the contracts or subcontracts of Sublandlord's contractors shall be written such that said warranties or guarantees shall inure to the benefit of both Sublandlord and Port, as their respective interests may appear, and can be directly enforced by either. Sublandlord shall furnish Port with copies of all contracts and subcontracts, if any, entered into in connection with the Work promptly after the same are executed.

(g) Assignment of Architect's Contract. Sublandlord hereby assigns to Port its rights under its contract with the Architect to proceed against the Architect in the event of a default by the Architect related to the design of the interior improvements for the space to be occupied by Port.

VI. Work Performed by Port. Sublandlord, at Sublandlord's discretion, may permit Port and any of Port's architects, engineers, contractors, suppliers, employees,

agents and other such parties (collectively, "Port's Contractors") to enter the Premises prior to completion of the Work in order to make the Premises ready for Port's use and occupancy. If Sublandlord permits such entry prior to completion of the Work, then such permission shall be deemed a license only and not a Sublease, and is conditioned upon: (a) Port obtaining Sublandlord's prior written approval of such entry, of Port's Contractors and of the work they will perform, and complying with all of the other requirements of the Sublease pertaining to work performed by Port in the Premises, all insurance requirements under the Sublease, and all other conditions imposed by Sublandlord for the prior submission of security, affidavits and lien waivers or otherwise in connection therewith, (b) Port and Port's Contractors working in harmony and not interfering with Sublandlord and Sublandlord's Architects, architects, engineers, contractors, suppliers, employees, agents and other such parties (collectively, "Sublandlord's Contractors") in doing the Work or with other tenants and occupants of the Building, and (c) Port paying for any utilities and services consumed in connection with such work. If at any time such entry shall cause or threaten to cause such disharmony or interference, or violate any of the other foregoing requirements, in Sublandlord's reasonable opinion, Sublandlord shall have the right to revoke such license immediately upon oral or written notice to Port. Sublandlord shall not be liable in any way for any injury, loss or damage which may occur to any decorations, fixtures, personal property, installations or other improvements or items of work installed, constructed or brought upon the Premises by or for Port or Port's Contractors prior to completion of the Work, all of the same being at Port's sole risk, and Port hereby agrees to protect, defend, indemnify and hold Sublandlord and its employees, agents, and affiliates harmless from all liabilities, losses, damages, claims, demands, and expenses (including attorneys' fees) arising from early entry to the Premises pursuant hereto.

VII. Miscellaneous.

(a) Application. This Exhibit shall not apply to any additional space added to the Premises at any time, whether by any options or rights under the Sublease or otherwise, unless expressly so provided in the Sublease or any amendment or supplement thereto.

(b) Sublease Provisions and Modification. This Exhibit is intended to supplement and be subject to the provisions of the Sublease, including, without limitation, those provisions requiring that any modification or amendment be in writing and signed by authorized representatives of both parties.

(c) Prevailing Wages for Construction Work. Sublandlord agrees that any person performing labor in the construction of the Work which Sublandlord is obligated to provide under this Work Letter shall be paid not less than the highest prevailing rate of wages and that Sublandlord shall include, in any contract for construction of the Work, a requirement that all persons performing labor under such contract shall be paid not less

than the highest prevailing rate of wages for the labor so performed. Sublandlord further agrees that, as to the construction of the Work under this Work Letter, Sublandlord shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code.

(d) Tropical Hardwood/Virgin Redwood Ban.

Except as expressly permitted by the application of Sections 121.3.b and 121.4.b of the San Francisco Administrative Code, neither Sublandlord nor any of its contractors shall provide any items to Port in the construction of the Work or otherwise in the performance of this Sublease which are tropical hardwoods, tropical hardwood products, virgin redwood, or virgin redwood products.

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood products.

In the event Sublandlord fails to comply in good faith with any of the provisions of Section 121 of the San Francisco Administrative Code, Sublandlord shall be liable for liquidated damages for each violation in any amount equal to Sublandlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Sublandlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Sublandlord from any contract with the City and County of San Francisco.

(e) Approvals. Sublandlord understands and agrees that Port is entering into this Work Letter in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by Port of the plans for the Work, completion of the Work nor any other approvals by Port hereunder shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of Port as tenant hereunder may be made by Port's Executive Director unless otherwise specified herein.

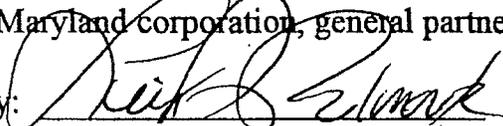
(f) Time of the Essence. Time is of the essence of every term and provision of this Work Letter.

IN WITNESS WHEREOF, the parties have executed this Work Letter as of the day and year first above written.

SUBLANDLORD:

AMB PROPERTY, L.P., CORPORATION,
a Delaware limited partnership

By: AMB PROPERTY CORPORATION,
a Maryland corporation, general partner

By: 
Luis A. Belmonte
Managing Director

PORT:

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

By: 
Douglas F. Wong
Executive Director

APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

By: 
Neil H. Sekhri
Assistant Port General Counsel

APPENDIX I
SCOPE OF ARCHITECT'S WORK

1. Interiors - Program Confirmation
 - 1.1 Visit the site and become familiar with the existing conditions.
 - 1.2 Review Port furnished program (prepared by David Robinson) for The Port of San Francisco
 - 1.3 Meet with key tenant representatives in order to verify required program adjacencies.
 - a. Preparation of conceptual space plans to illustrate adjacencies.
 - 1.4 Arrange and attend weekly meetings with Port as needed (up to a maximum of 6 meetings)
 - 1.5 Develop project schedule coordinated with construction schedule for Pier 1.
 - 1.6 Obtain Port's sign-off at end of this phase.
 - 1.7 Deliverable documents at the end of the phase include Port approved program and conceptual space plans.

2. Interiors - Schematic Design Phase
 - 2.1 Prepare schematic layout.
 - 2.2 Develop interior architecture concept. Develop approach to finishes, materials, and furniture (built-in and freestanding) for work within project scope including presentation of loose samples. Prepare questionnaires regarding equipment types, location and quantities. The conceptual furniture and equipment plans are for the purpose of determining locations of telephone, data and electrical outlets.
 - 2.3 Arrange and attend consultant coordination meetings (maximum of 6 meetings).
 - 2.4 Coordinate design schedule with Contractor.
 - 2.5 Arrange and attend weekly meetings with Port as needed (up to a maximum of 6 meetings)
 - 2.6 Review contractor-prepared cost estimate
 - 2.7 Obtain Port sign-off at end of this phase.
 - 2.8 Deliverable documents at the end of this phase include floor plans which include conceptual furniture and equipment locations and selected interior elevations, loose samples of finishes and fabrics ("Schematic Plan").

3. Interiors - Design Development Phase
 - 3.1 Based on Port-approved Schematic Plan, revise and finalize floor plans and interior architecture.
 - 3.2 Finalize Port-approved concept for finishes, materials and furniture.
 - 3.3 Prepare outline specifications.
 - 3.4 Conduct regular coordination and progress meetings with all consultants (maximum of 4 meetings).
 - 3.5 Review budget with Port, Owner and Contractor.
 - 3.6 Arrange and attend weekly progress meetings with Port as needed (up to a maximum of 6 meetings).
 - 3.7 Deliverable documents at the end of this phase include floor plans, reflected ceiling plans; interior elevations and preliminary finish schedules and other items as specified in Section III(b) of the Work Letter ("Design Development Plan").

4. Interiors - Construction Documentation Phase
 - 4.1 Produce final construction documents consisting of floor plans, reflected ceiling plans, elevations, sections, finishes, door and hardware schedules, and details for all spaces within the scope of work.
 - 4.2 Coordinate preparation of final specifications.
 - 4.3 Conduct regular coordination and progress meetings with all consultants (maximum of 6 meetings).
 - 4.4 Arrange and attend a maximum of 6 progress meetings with Port.

5. Interiors - Plan Review and Permit
 - 5.1 Respond to questions received from the General Contractor and its bidders; issue clarifications as required.
 - 5.2 Respond to plan review comments made by the Port's reviewing engineers and Port's Representative during the plan review period.
 - 5.3 Deliverable documents during this phase include responses to plan review comments, addenda to the Final Construction Documents and revised Final Construction Documents for approved Permit Set.

6. Interiors - Construction Administration (Tenant Improvements)
 - 6.1 Administer construction with the intent to clarify and interpret the intent of the Construction Documents.
 - 6.2 Attend periodic construction meetings (one per week, maximum of twenty-eight meetings).
 - 6.3 Answer Contractor's Requests for Information (RFI's) during established construction period.
 - 6.4 Review submittals for general conformance with project design intent.
 - 6.5 Provision of periodic on-site observation to review the progress of the construction for general conformance with design intent.
 - 6.6 Review shop drawings, materials and other submittals for general conformance with the design intent of the Construction Documents.
 - 6.7 Review the General Contractor's monthly applications for payment.
 - 6.8 Provide a reasonable amount of assistance in the review of requests for Change Orders to the Construction Documents.
 - 6.9 At the point where the Architect deems the project Substantially Complete as defined in Section V. (c) of the Work Letter, Port, Architect, their consultants, Owner and General Contractor shall prepare an architectural punchlist.
 - 6.10 Issue Certificate of Substantial Completion.
 - 6.11 Coordinate transmittals to the Port and Owner of Record Drawings and Specifications and all other Record Documents prepared by the General Contractor.
 - 6.12 Instruments employed in this phase of the work shall include Construction Change Bulletins, if any, shop drawing review, responses to the Contractor's Requests for information, if any, punchlists, and Certificate of Substantial Completion.

Appendix II

Base Building Improvements

The following defines the Base Building Improvements (shell and core components) for Port's premises to be provided by sublandlord (as described in the construction drawings dated 7/8/99), and as further revised to comply with Port's requirements and regulatory and permitting authorities. All other work will be part of Port's tenant improvements.

SITE

1. Exterior public access apron, including paving, railing, lighting, benches, trash receptacles, required signage, embedded bronze plaques; concrete pads and fencing for transformer and emergency generator enclosures, all as per code and plans approved by Bay Conservation and Development Commission, Waterfront Design Advisory Committee and State Historic Preservation Office (as appropriate).
2. Site security.
3. Bicycle parking, racks as required; north apron to provide access for small van-type vehicles.
4. Conduit installed below grade providing telephone and data to the building.
5. Required utilities to the point of connection.
6. Interior public access, including demising walls, demising the Historic Railtrack Corridor linking the Embarcadero and the south apron.

STRUCTURE

1. Bulkhead and shed structures to be upgraded per code and approved plans.
2. Foundation and structural framing designed to support live load of 100 psf in all areas.
3. Six interior stairways and three bridges within the Port's premises. Two of the stairways are standard stairs adjacent to bridges.
4. Three pairs of double entry doors on the Embarcadero side and four door leaves from the Historic Rack Corridor onto the south public access apron.
5. Window systems to be repaired/replaced per plans. Tenant entry/exit doors to premises per code.

ROOF

1. Roof system to be replaced per plans and specifications.

FIRE AND SAFETY

1. The shell and core building shall be designed to support fire and life safety systems approved by the Port and agreements with the Fire Marshall.

SECURITY SYSTEM

1. The building shell and core will include a perimeter security system designed to provide intrusion detection (alarm) and electronic access control.

CORE COMPONENTS

1. The building core elements will be located per current plans and will be designed to comply with the applicable codes per the site permit package. The Port will include any code or Americans with Disabilities Act (ADA) required items in the core, which are specific to the tenant's improvements.
2. The core components of the Port's space will include two public telephones (one to be handicap accessible), two public drinking fountains (one to be handicap accessible) and one set of men's and women's restrooms all of which must be readily available to the public during business hours. In addition, the core will include three additional sets of men's and women's restrooms, main electrical and data closets, an elevator machine room, a fire pump room, a mechanical equipment room, two janitor's closets, drinking fountains as required by the current code, mechanical chases, and equipment rooms.
3. The core will be enclosed by dry wall partitions with an NC rating of 45 fifteen feet away from the core and will be completed and ready to accept the tenant finishes (e.g. drywall, paint, fabric, or millwork).
4. The core doors, hardware and frames will be pursuant to building standards and code.
5. The core lighting fixtures and light levels will be pursuant to building standards and code.
6. The core and all equipment areas will be serviced from the shell and core mechanical system.
7. The core restrooms will be completely finished pursuant to the building standards. All code required graphics and signs will be installed in the shell and core.
8. Installation of emergency generator. (Port and Sublandlord acknowledge that the cost of the generator (but not the installation) will be included in the cost of the Work pursuant to the Work Letter).

ELEVATORS AND LIFTS

1. The premises shall include one ADA-accessible elevator with a 2500 pound capacity and one ADA-required lift to the passenger gallery; all other lifts to be part of tenant improvements.

MECHANICAL SYSTEMS

1. The mechanical system utilizes bay water as a heat sink in the summer. A water cooled double bundler condenser will be located in the shell mechanical room. The condenser will circulate fresh water in a closed loop between the chiller and on one side of a heat exchanger and return water to the bay. The water will be circulated in radiant floor piping and tubing.
2. The central energy management system will be part of the shell and core system and the design will allow for the addition of the Port's HVAC systems.

3. Hot water boilers will provide heating.
4. The plumbing system will be designed to accommodate the shell and core requirements and any additional fixtures the Port requires as part of it tenant improvements.
5. Port's upgrade of the HVAC system is part of tenant improvements.

ELECTRICAL

1. The electrical service (conduit and wiring) will be supplied to electrical closets and sub-closets strategically located in the building.
2. The service will be used to supply 270/408V panels for lighting and then be transformed to provide 120/208V power for convenience outlets. The entire service will provide approximately 7-10 watts per square foot of building area for base building systems and 4-5 watts per square foot for tenant improvements.
3. The electrical system will meet all life safety requirements under current codes.
4. The lighting system for the base building will illuminate exit doors, the central monitor and building common areas. All office lighting will be provided by the Port.
5. All electrical panels and breakers will have isolated grounds and surge protectors.
6. The shell and core will provide space for and conduit to a main telephone and data closet, designed to accept regular plenum rated cable and fiber optic cable. The Port will provide in the tenant improvement phase, distribution passageways leading from the main closet to sub-closets in the building core.
7. Port shall purchase and install at its cost the transformer, high voltage switchgear and related wiring and cabling designed and installed pursuant to Sublandlord's construction drawings and construction schedule.

EXHIBIT C

MEMORANDUM OF COMMENCEMENT DATE AND AMENDMENT OF BASIC SUBLEASE INFORMATION

This Memorandum of Commencement Date and Amendment of Basic Sublease Information ("Memorandum") is executed by AMB PROPERTY, L.P., a Delaware limited partnership ("Sublandlord"), and THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION ("Port") pursuant to Article 1(C) of that certain Sublease dated August 2, 1999 ("Sublease"), under which Port has leased from Sublandlord certain Premises ("Premises") in Pier 1, San Francisco, California. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Sublease.

In consideration of the mutual covenants and agreements set forth in the Sublease, Sublandlord and Port hereby agree as follows, which agreement shall amend the Basic Sublease Information as applicable:

1. **Commencement Date.** The Commencement Date is _____, 200_.
2. **Expiration Date.** The Expiration Date is August __, 2049.
3. **Work Substantially Complete.** Port hereby acknowledges that the Work is substantially complete as that term is defined in Section V(c) of the Work Letter and in accordance with the terms of the Sublease, and acknowledges that Sublandlord has no further obligation with respect to the Work except for punchlist items pursuant to Section V(d) of the Work Letter.
4. **Rentable Area of the Premises.** The calculation of the rentable area of the Premises is revised to be _____ rentable square feet.
5. **Allowance and Improvement Cost Advance.** The Allowance is \$ _____, which Allowance has been fully paid by Sublandlord. Port's Cost (per Section IV(c) of the Work Letter) is \$ _____. The Improvement Cost Advance is \$ _____, payable by Port with interest at the annual rate of 9% in 180 equal monthly installments of principal and interest in the amount of \$ _____ each.

6. **Base Rent.** The initial Base Rent is adjusted to equal \$ _____ per month.
7. **Port's Pro Rata Share.** Port's Pro Rata Share is adjusted to equal _____ percent (_____ %). The rentable area of the Building for purposes of calculating Port's Pro Rata Share is _____ rentable square feet.
8. **Ratification and Confirmation.** Sublandlord and Port hereby ratify and confirm each and every provision of the Sublease as modified by paragraphs 1 through 7 above.

SUBLANDLORD:

AMB PROPERTY, L.P.,
a Delaware limited partnership

By: AMB PROPERTY CORPORATION,
a Maryland corporation,
general partner

By: _____
Luis A. Belmonte,
Managing Director

PORT:

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

By: _____
Douglas F. Wong,
Executive Director

EXHIBIT D

PIER 1

RULES AND REGULATIONS

As used herein, (i) the term "tenant" means any subtenant under a sublease of a portion of the Building with AMB Property, L.P. and (ii) the term "BCDC Permit" means Permit No. 2-99 issued by the Bay Conservation and Development Commission with respect to the Building.

1. The sidewalks, halls, passages, exits, entrances, stairways and any other common areas of the Building shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress to and egress from their respective premises. Except for the exterior public access areas, the Historic Railtrack Corridor and the north access passage (all of which require public access under the BCDC Permit), the halls, passages, exits, entrances, common areas and stairways are not for the general public. Subject to the requirements of the BCDC Permit, Sublandlord shall in all cases retain the right to control and prevent access of all persons to the common areas whose presence in the judgment of Sublandlord would be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No tenant and no employee or invitee of any tenant shall go up on the roof of the Building. If required by law, Sublandlord shall have the right at any time without the same constituting actual or constructive eviction and without incurring any liability to Sublandlord therefor to change the arrangement and/or location of entrances or passageways, doors or doorways, corridor, elevators, stairs, toilets or other common areas of the Building.

2. No sign, placard, picture, name, advertisement or notice visible from the exterior of any tenant's premises shall be inscribed, painted, affixed or otherwise displayed by any tenant on any part of the Building without the prior written consent of Sublandlord. Sublandlord will adopt and furnish to tenants general guidelines relating to signs inside the Building. Port agrees to conform to such guidelines. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Port by a person approved by Sublandlord. Material visible from outside the Building will not be permitted.

3. The Premises shall not be used for the storage of merchandise held for sale to the general public or for lodging. No cooking shall be done or permitted on the Premises, except that private use by Port of Underwriters' Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages, and Underwriters' Laboratory

approved microwave ovens for warming foods, shall be permitted, provided that such use is in accordance with all applicable federal, state and municipal laws, codes, ordinances, rules and regulations. Notwithstanding the foregoing, Port is permitted to heat foods in the ovens in its warming pantry for functions held in the Port conference rooms or south apron deck.

4. No tenant shall cause any unnecessary labor by reason of such tenant's carelessness or indifference in the preservation of good order and cleanliness. Sublandlord shall not be responsible to any tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of any tenant by the janitor or any other employee or any other person. Janitor service will not be furnished by Sublandlord on nights when rooms are occupied after 6 p.m. unless, by agreement in writing, service is extended to a later hour for specifically designated rooms.

5. Sublandlord will furnish each tenant free of charge with two keys to each door lock provided in the Premises by Sublandlord. Tenant may make copies of said keys at Tenant's cost. No tenant shall alter any lock or install a new or additional lock or any bolt on any exterior door of its premises without Sublandlord's prior consent. Each tenant, upon the termination of its lease, shall deliver to Sublandlord all keys to doors in the Building.

6. Sublandlord shall designate appropriate entrances for deliveries or other movement to or from the Premises of equipment, materials, supplies, furniture or other property, and Port shall not use any other entrances for such purposes. All persons employed and means or methods used to move equipment, materials, supplies, furniture or other property in or out of the Building must be approved by Sublandlord prior to any such movement. The scheduling and manner of all move-ins and move-outs shall be coordinated through Sublandlord and shall only take place after 6 p.m. on weekdays, on weekends (subject to additional charges), or at such other times as Sublandlord may designate. Sublandlord shall have the right to prescribe the maximum weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Sublandlord, stand on a platform of such thickness as is necessary to properly distribute the weight. Sublandlord will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Building by moving or maintaining such property shall be repaired at the expense of Port.

7. No tenant shall use or keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Sublandlord or other occupants of the Building by reason of noise, odors or vibrations, or interfere in any way with other tenants or those having business in the Building, nor shall any animals or birds be brought or kept in the Premises or the Building except as required by law, e.g. guide dogs and except that Port's

employees may bring their pet dogs onto the Premises on Saturdays, Sundays and holidays.

8. Except for the use of the Conference Rooms after Port's normal business hours, Sublandlord reserves the right to exclude from the Building between the hours of 6 p.m. and 7 a.m., and at all hours on Saturdays, Sundays and legal holidays, all persons who do not present identification acceptable to Sublandlord. All persons entering the Building during said hours shall comply with any sign-in and sign-out procedures that may be established by Sublandlord. Persons using the Conference Rooms shall comply with the sign-in and sign-out procedures established by Port and required by BCDC. Upon request by Sublandlord, each tenant shall provide Sublandlord with a list of all persons authorized by such tenant to enter its premises and shall be liable to Sublandlord for all acts of such persons. Sublandlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In the case of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Sublandlord's opinion, Sublandlord reserves the right to prevent access to the Building during the continuance of the same by such action as Sublandlord may deem appropriate, including closing doors.

9. The directory of the Building will be provided exclusively for the display of the name and location of tenants of the Building and Sublandlord reserves the right to exclude any other names therefrom. Additional names which Port may desire to have placed on the Building directory must first be approved by Sublandlord and shall be at such charges as may be established by Sublandlord. Sublandlord reserves the right to restrict the amount of directory space utilized by any tenant.

10. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any window of the Building without the prior written consent of Sublandlord. In any event, with the prior written consent of Sublandlord, such items shall be installed on the office side of Sublandlord's standard window covering and shall in no way be visible from the exterior of the Building. Port shall keep window coverings closed when the effect of sunlight (or the lack thereof) would impose unnecessary loads on the Building's heating or air conditioning systems.

11. Each tenant shall ensure that the doors of its premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before all of such tenant's employees leave the Premises so as to prevent waste or damage, and for any default or carelessness in this regard, Port shall make good all injuries sustained by other tenants or occupants of the Building or Sublandlord. All tenants shall keep the doors to the Building corridors closed at all times except for ingress and egress.

12. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were construed, no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or invitees, shall have caused it.

13. Except with the prior written consent of Sublandlord or as permitted by the Sublease, no tenant shall sell any newspapers, magazines, periodicals, theater or travel tickets or any other goods or merchandise to the general public in or on its premises, nor shall any tenant carry on or permit or allow any employee or other person to carry on the business of stenography, typewriting, printing or photocopying or any similar business in or from its premises for the service or accommodation of occupants of any other portion of the Building, nor shall the premises of any tenant be used for manufacturing of any kind, or any business or activity other than that specifically provided for in such tenant's lease.

14. Except as allowed under the Sublease, no tenant shall install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. No television or radio or recorder shall be played in such a manner as to cause a nuisance to any other tenant.

15. There shall not be used in any space, or in the public halls of the Building, either by any tenant or others, any hand trucks except those equipped with rubber tires and side guards or such other material handling equipment as Sublandlord may approve. No other vehicles of any kind shall be brought by any tenant into the Building or kept in or about its premises, except that, Port vehicles may be used to access the emergency generator and docking area on the north apron when required and pursuant to the BCDC Permit.

16. Each tenant shall store all its trash, garbage and recycling materials within its premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of or recycled in the ordinary and customary manner of removing and disposing of office building trash and garbage in the City of San Francisco without being in violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through entryways and elevators provided for such purposes and at such times as Sublandlord shall designate.

17. Canvassing, soliciting, distribution of handbills or any other written material and peddling in the Building are prohibited, and each tenant shall cooperate to prevent the same.

18. Sublandlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Sublandlord shall be

construed as a waiver of such Rules and Regulations in favor of any other tenant or tenants, nor prevent Sublandlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.

19. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the agreements, covenants, conditions and provisions of any lease of premises in the Building.

20. Sublandlord reserves the right to make such other reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Building and for the preservation of good order therein, provided that such rules and regulations are not in violation of the Master Lease, the Sublease or the BCDC Permit.

7c COPY

**MEMORANDUM OF COMMENCEMENT DATE
AND AMENDMENT OF BASIC SUBLEASE INFORMATION**

This Memorandum of Commencement Date and Amendment of Basic Sublease Information ("Memorandum") is executed by AMB Pier One, LLC, a California limited liability company ("Sublandlord"), and THE CITY AND COUNTY OF SAN FRANCISCO through THE SAN FRANCISCO PORT COMMISSION ("Port") pursuant to Article 1(C) of the certain Sublease dated August 2, 1999 ("Sublease"), under which Port has leased from Sublandlord certain premises ("Premises") in Pier 1, San Francisco, California. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Sublease.

In consideration of the mutual covenants and agreements set forth in the Sublease, Sublandlord and Port hereby agree as follows, which agreement shall amend the Basic Sublease Information as applicable:

1. **Commencement Date.** The Commencement Date is February 1, 2001.
2. **Expiration Date.** The Expiration Date is August 1, 2049.
3. **Work Substantially Complete.** Port hereby acknowledges that the Work is substantially complete as that term is defined in Section V(c) of the Work Letter and in accordance with the terms of the Sublease, and acknowledges that Sublandlord has no further obligation with respect to the Work except for punchlist items pursuant to Section V(d) of the Work Letter.
4. **Rentable Area of the Premises.** The rentable area of the Premises is 52,304 rentable square feet.
5. **Allowance and Improvement Cost Advance.** The Allowance is \$40.00 per rentable square foot times the rentable area of the Premises, which Allowance has been fully paid by Sublandlord. Port's Cost, per Section IV(c) of the Work Letter, is \$25.00 per rentable square foot times the rentable area of the Premises. The Improvement Cost Advance is \$25.00 per square foot times the rentable area of the Premises, payable by Port with interest at the annual rate of 9% in 180 equal monthly installments of principal and interest in the amount of \$13,262.55 each.
6. **Base Rent.** The initial Base Rent on the Commencement Date of the lease was \$152,553.33 per month. The current rent as adjusted pursuant to the lease is \$180,775.70 per month.
7. **Port's Pro Rata Share.** Port's Pro Rata Share is equal to 34.5%. The rentable area of the Building for purposes of calculating Port's Pro Rata Share is 151,606 rentable square feet.

FIRST AMENDMENT TO PIER ONE SUBLEASE

This First Amendment to Pier One San Francisco, California Sublease (this "**First Amendment**"), dated for reference purposes only as of February 8, 2016 is by and between AMB Pier One LLC, a California limited liability company (successor in interest to AMB Property, L.P.) as Sublandlord ("**AMB Pier One**" or "**Sublandlord**") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating through the SAN FRANCISCO PORT COMMISSION ("**Port**") as subtenant.

RECITALS

A. Effective August 2, 1999, Port and AMB Property L.P. entered into the Master Lease for development and use of that certain real property known as Pier 1 ("**Master Premises**"). The Master Lease is for a fifty year term expiring on August 1, 2049 ("**Expiration Date**"). Concurrently, AMB Property L.P. and Port entered into a sublease for a portion of the Pier 1 shed to Port ("**Port Sublease**"). Both the Master Lease and the Port Sublease were approved by the Port Commission by Resolution 99-17 and the Board of Supervisors by Resolution 329-99. In November 2000, AMB Pier One became the Sublandlord after AMB Property L.P. assigned its entire interest in the Master Lease to AMB Pier One. The Port Sublease commenced on February 1, 2001 and expires on the Expiration Date. On June 3, 2011, AMB Property Corporation merged with Prologis with the surviving entity changing its name to Prologis, Inc., and its operating company AMB Property, L.P. changing its name to Prologis, L.P. ("**Prologis**").

B. AMB Pier One now desires to obtain a fifteen (15) year extension option under the Master Lease as more particularly described in the Second Amendment to the Master Lease. As material consideration for that option, AMB Pier One agrees to the following significant terms as further described in the Second Amendment to the Master Lease, this First Amendment to the Port Sublease and the Third Amendment to the sublease between AMB Pier One and Prologis: (i) in the next few years, AMB Pier One will make substantial capital investments in Pier 1 and Prologis, will consolidate its subleased space allowing for additional subleasing to a third party at current market rates which is expected to result in increased participation rent to Port; (ii) Port will have an early termination right and a 15-year extension option under the Port Sublease as more specifically described below; (iii) AMB Pier One will commit to address sea level rise as determined necessary by the Port's Chief Harbor Engineer; (iv) the amendments will include various provisions to incorporate the above terms into the existing leases, including provisions for valuation and rent adjustments; and (v) the amendments, including this First Amendment, will include updated City requirements. The Parties agree that each of the terms in this First Amendment are material and that Port would not have agreed to the Master Lease extension option absent such terms.

C. The original Sublease and this First Amendment shall collectively be referred to as the "**Sublease**". All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the original Sublease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Sublandlord and Port hereby amend the original Sublease as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. **Option to Extend.** Article 1(F) is added to the to the Port Sublease to read as follows:

“1(F) Port’s Option to Extend Term; Rent.

(a) **Option.** Provided that Sublandlord has exercised its Extension Option as defined in Section 45 of the Master Lease, Sublandlord grants to Port one (1) option for an additional fifteen (15) year term (“**Extension Option**”) as to the entire Premises only (“**Extension Term**”) commencing upon the date following the Expiration Date (the “**Option Commencement Date**”) (August 2, 2049) and expiring on August 1, 2064 (“**Option Expiration Date**”). Port must exercise the Extension Option no later than the date that is twelve (12) months from the date of Sublandlord’s Option Notice as defined in Section 45.2 of the Master Lease. It shall be a condition to the effective exercise of each Option, that this Sublease be in full force and effect both on the date Subtenant delivers to Sublandlord its notice of exercise and on the date the applicable Extended Term is to commence.

If any Default by Port is outstanding hereunder either at the time of Port’s exercise of the Extension Option or at any time prior to the first day of the Extension Term and remains uncured after notice and the expiration of all applicable cure periods, then Sublandlord may elect by written notice to Port to reject Port’s exercise of the Extension Option, whereupon the Extension Option shall be null and void. If Port fails to exercise the Extension Option or Sublandlord rejects Port’s exercise of the Extension Option in accordance with this Section, then this Lease will terminate as of the original Expiration Date.

The lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the Option Expiration Date and the Base Rent hereunder shall be determined as set forth below.

(b) **Rent for Extension Term.** Base Rent for the Extension Term shall be adjusted to equal the then Fair Market Value of the Premises. The Fair Market Value shall be based upon the rental rate for leases then being entered into for comparable space in a comparable location in San Francisco. Fair Market Value will be determined in accordance with Section 2(B) of the Lease, except that, the term “Adjustment Date” shall be replaced with “Option Commencement Date” and the term “Adjustment Period” shall be replaced with “Extension Term.” In addition, as circumstances dictate, the parties may mutually agree to use a service other than the American Arbitration Association for the purpose of selecting a third appraiser.”

3. **Term.** Article 1(C) of the Sublease is deleted and replaced with the following:

“1(C). **Term.** The Premises is leased for a term which commenced on February 1, 2001 (“**Commencement Date**”) and shall expire on August 1, 2049 (same as the expiration date of the term of the Master Lease) (“**Expiration Date**”), subject to the Extension Option described in Article 1F of this Sublease unless earlier terminated in accordance with the terms of this Sublease. The period from the Commencement Date until such Expiration Date or the expiration date of the Extension Term, as the case may be, is referred to as the “**Term.**””

4. **Unilateral Termination Right.** Article 1(E) is added to the Port Sublease to read as follows:

“1(E) **Port Option to Terminate.** At no cost to Port, Port shall have the option to terminate this Sublease as of February 1, 2031 (“**Early Termination Date**”) by providing written notice to Sublandlord no later than August 1, 2029. If Port exercises its option under this Article 1(E), Port shall vacate the Premises no later than the Early Termination Date, and this Sublease shall be terminated effective as of such date without cost or liability on the part of Port or Sublandlord. Time is of the essence with respect to Port’s delivery of such early termination notice, and Port’s option to terminate shall be null and void in the event Port fails to timely deliver such early termination notice.”

5. City Requirements. Article 31 Section O is deleted and replaced with the following:

“1. MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Sublease. By signing this First Amendment, Sublandlord confirms that Sublandlord has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

2. Controller’s Certification of Funds. The terms of this Sublease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Sublease, there shall be no obligation for the payment or expenditure of money by City under this Sublease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Sublease commences, sufficient funds for the payment of Rent and any other payments required under this Sublease are not appropriated, then City may terminate this Sublease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Sublandlord reasonable advance notice of such termination.

3. Prevailing Wages. Sublandlord agrees that any person performing labor in the construction of improvements and alterations and any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Premises comprise a public work if paid for in whole or in part out of public funds. The terms “public work” and “paid for in whole or in part out of public funds” as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Sublandlord agrees that any person performing labor for Sublandlord on any public work at the Premises shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(e) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Sublandlord shall include in any contract for such labor a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Sublandlord shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

4. Non Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Sublease, Sublandlord agrees not to discriminate against any employee of, any City employee working with Sublandlord, or applicant for employment with Sublandlord, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subcontracts. Sublandlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Sublandlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions.

Sublandlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Sublandlord does not as of the date of this Sublease and will not during the term of this Sublease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, 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, as well as any benefits other than the benefits specified above, 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(b) of the San Francisco Administrative Code.

(d) **CMD Form.** As a condition to this Sublease, Sublandlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (the "CMD"). Sublandlord hereby represents that prior to execution of the Sublease: (a) Sublandlord executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (b) the CMD approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the Sublease of property to City are incorporated in this Section by reference and made a part of this Sublease as though fully set forth herein. Sublandlord shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Sublandlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Sublandlord and/or deducted from any payments due Sublandlord.

5. Tropical Hardwood and Virgin Redwood Ban.

(a) Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Sublandlord nor any of its contractors shall provide any items to City in the construction of any improvements or otherwise in the performance of this Sublease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

(c) In the event Sublandlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Sublandlord shall be liable for liquidated damages for each violation in an amount equal to Sublandlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Sublandlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Sublandlord from any contract with the City and County of San Francisco.

6. Bicycle Parking Facilities.

Article 1.5, Section 155.3, of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle parking at City-leased buildings at no cost to Sublandlord. Port has installed and shall maintain, at its sole cost, thirty (30) Class 1 Bicycle Parking Spaces (as defined in the Planning Code) and four to five (4 - 5) Class 2 Bicycle Parking Spaces (as defined in the Planning Code) in the Building locations depicted on the attached *Exhibit A*.

7. Resource-Efficient City Buildings and Pilot Projects. Sublandlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction and operation of City buildings. Sublandlord hereby agrees that it shall comply with all applicable provisions of such code sections.

8. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City 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.

9. Conflicts of Interest. Through its execution of this Sublease, Sublandlord acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Sublandlord becomes aware of any such fact during the Term of this Sublease, Sublandlord shall immediately notify City.

10. Notification of Limitations on Contributions. Through its execution of this Sublease, Sublandlord 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, the board on which that City elective officer serves, or a board on which an appointee of that individual 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. Sublandlord 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. Sublandlord further acknowledges that the prohibition on contributions applies to each Sublandlord; each member of Sublandlord's board of directors, and Sublandlord's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Sublandlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Sublandlord. Additionally, Sublandlord acknowledges that Sublandlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Sublandlord further agrees to provide to City the name of each person, entity or committee described above.

11. Preservative-Treated Wood Containing Arsenic. Sublandlord may not purchase preservative-treated wood products containing arsenic in the performance of this Sublease 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. Sublandlord 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 Sublandlord 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."

6. **Real Estate Broker's Fees.** Port is not liable for any real estate commissions, brokerage fees or finder's fees which may arise in connection with this First Amendment or the exercise of the option provided by this First Amendment. Sublandlord and Port each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to indemnify the other Party from any Losses arising out of such claim.

7. **Miscellaneous.** This First Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This First Amendment is made for the purpose of setting forth certain rights and obligations of Sublandlord and Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary or otherwise. This First Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this First Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. As amended hereby, the Sublease is hereby ratified and confirmed in all respects. In the event of any inconsistencies between the terms of this First Amendment and the Sublease, the terms of this First Amendment shall prevail. Time is of the essence of this First Amendment. This First Amendment shall be governed by the laws of the State of California. Neither this First Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

8. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Sublease shall remain in full force and effect. The parties agree that each of the terms of this First Amendment are material and that Port would not have entered into this First Amendment absent such terms.

9. **Effective Date.** The Effective Date of this First Amendment is the effective date of the Second Amendment to Lease between AMB Pier One LLC and Port dated February 8, 2016 for reference purposes.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, PORT and TENANT execute this First Amendment to the Port Sublease at San Francisco, California, as of the last date set forth below.

PORT:

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

By: _____
Susan Reynolds, Deputy Director, Real Estate

Date Signed: _____

TENANT: AMB Pier One LLC, a California limited liability company
By: Prologis, L.P., formerly known as AMB Property, L.P.,
a Delaware limited partnership, its Manager

By: Prologis, Inc., formerly known as AMB Property
Corporation, a Maryland corporation, its General Partner

By:  _____
Stephen T Lueck, Senior Vice President

Date Signed: 2/8/16

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Rona H. Sandler, Deputy City Attorney
Amendment Prepared by Jay Edwards, Senior Property Manager _____ (initial)

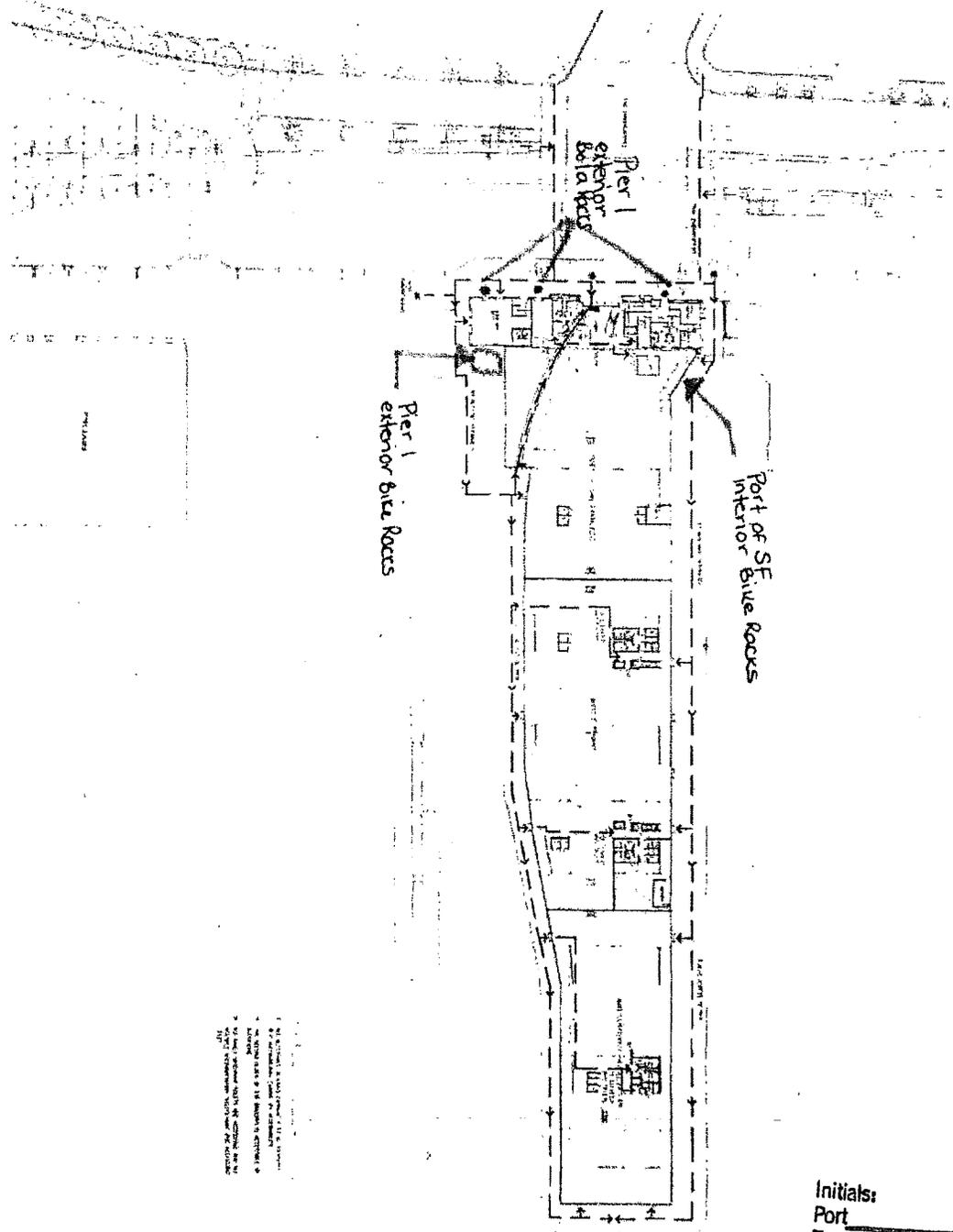
Port Commission Resolution _____

Board of Supervisors Resolution _____

EXHIBIT A
BICYCLE PARKING FACILITIES



PIER 1



1. All dimensions are shown in feet and inches.
2. All dimensions are shown in feet and inches.
3. All dimensions are shown in feet and inches.
4. All dimensions are shown in feet and inches.
5. All dimensions are shown in feet and inches.

Initials:
Port
Tenant STC



MEMORANDUM

February 4, 2016

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. Leslie Katz
Hon. Doreen Woo Ho

FROM: Monique Moyer *M Moyer*
Executive Director

SUBJECT: Request approval of (i) a Second Amendment to Lease No. L-12838 for the premises located at Pier One in the Northern Waterfront between the Port of San Francisco and AMB Pier One, LLC granting AMB Pier One, LLC an option to extend the lease term for an additional 15 years commencing August 2, 2049; and (ii) a First Amendment to the Port Sublease for Pier One to grant Port a concurrent 15-year option, both subject to Board of Supervisors' approval

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

I. EXECUTIVE SUMMARY

AMB Pier One LLC, a wholly owned subsidiary of Prologis, Inc. ("Tenant"), has renovated, operated and managed Pier One through a Master Lease since 1999. Pier One serves as the Port's main office (through the Port Sublease) and Prologis's world headquarters. Prologis is the leading owner, operator and developer of industrial real estate, focused on global and regional markets across the Americas, Europe and Asia specializing in infill locations, owning and operating logistics facilities near key seaports, airports and major highway interchanges. Prologis is a publicly traded Real Estate Investment Trust (REIT) on the New York Stock Exchange (NYSE), a member of the S&P 500 and is among the top 100 most sustainable companies in the world.

The Master Lease premises comprise an aggregate of 150,000 sq. ft. The terms of the Master Lease provide for a minimum annual rent to the Port of \$1,342,000 in ground rent annually. In addition to annual minimum rent, the Master Lease provides for 50% of participation rent from the project subleases above a base threshold that reflected the investment capital to renovate the pier, bulkhead and shed. The Master Lease expires in 2049 and there is currently no option to extend.

THIS PRINT COVERS CALENDAR ITEM NO. 15A

The Port Sublease premises comprise of approximately 50,000 sq. ft. which represents a third of Pier One and such sublease expires co-terminus with the Master Lease expiration in 2049. Port rent is reset to fair market value every ten years with no right to terminate.

The other major sublease is with a second wholly owned Prologis, Inc. subsidiary called Prologis L.P. and referred to in this Memorandum as "Prologis." The Prologis sublease premises comprise of approximately 50,000 sq. ft. can be renewed at the subtenant's option every ten years and allows the subtenant to terminate. Prologis's sublease rent is reset upon each 10-year renewal at fair market value. The remaining 50,000 sq. ft. of the Pier One shed is subleased to third parties at fair market value upon the commencement or renewal of each sublease.

Prologis has been and continues to be an ideal partner of the Port. The Pier One facility is maintained in excellent condition, staff is highly responsive to the Port's ongoing operational needs and Prologis has demonstrated its willingness to invest significant capital as required. The retention of Prologis as its world headquarters in Pier One is important not only to the Port but to San Francisco. Prologis has been approached on numerous occasions to relocate to more cost effective cities however their executive staff is committed to San Francisco. They have supported the Port on numerous occasions and were a marquee sponsor of the Port's 150th Anniversary as well as many other civic events. To continue their heritage of being formed in San Francisco, Prologis approached the Port to extend the Master Lease an additional 15 years which would provide for a term of 65 years in total, consistent with the public trust use of the property.

Port staff supports the request and as material consideration for the Port granting such option, Prologis agrees to the following significant terms to the benefit of the Port:

A. Master Lease Second Amendment:

- (i) Guarantee an additional \$500,000 in participation rent to the Port by requiring Prologis to consolidate its subleased premises and putting additional sublease space on the market now to take advantage of favorable current market rates;
- (ii) Agree to permit and implement, at its cost, certain sea level rise protection measures if required by the Chief Harbor Engineer (CHE) to protect health and safety;
- (iii) Agree to termination of the Master Lease without cost or liability to the Port should the CHE determine that there is an ongoing threat to human health and safety due to sea level rise;
- (iv) Agree to consider implementing more extraordinary flood protection measures such as raising the deck level in return for early exercise of the extension option and subject to project feasibility;
- (v) Remain responsible for all leasing, management and capital required to maintain the premises during the extension term;

(vi) Agree to pay fair market value minimum rent during the extension term, including automatic escalations and in no event less than the current minimum rent;

(vii) Continue to pay 50% participation rent of all sublease net income; and

(viii) Comply with current City requirements.

B. Prologis Sublease Amendment:

(i) Extend Prologis's current sublease due to expire in 2021, for an additional 20-year term until 2040, eliminate Prologis's right to terminate and add an additional option to renew the sublease subject to Tenant's exercise of the Master Lease extension option;

(ii) By 2021, invest \$10 -12 million in capital for Prologis's Pier One world headquarters sublease premises; and

(iii) Comply with the current City requirements.

C. Port Sublease:

(i) Grant the Port a one-time early termination right in 2031, for any reason, and if not exercised, grant the Port a 15-year extension option in the event Tenant exercises the Master Lease extension.

II. BACKGROUND

Effective August 2, 1999, the Port and AMB Property, L.P., a Delaware limited partnership, entered into the Master Lease for development and use of Pier One premises comprised of pier, shed, bulkhead, water and land surface area, all existing building, structures and substructures affixed thereto, together with all rights, privileges and licenses appurtenant thereto, known as Pier 1 ("Master Premises"). The existing Master Lease is for a 50-year term expiring on August 1, 2049 ("Expiration Date"). Concurrently, AMB Property, L.P. and Port entered into a sublease for a portion of the Pier 1 shed to Port ("Port Sublease"). In 1999 both the Master Lease and the Port Sublease were approved by the Port Commission by Resolution 99-17 and the Board of Supervisors by Resolution 329-99.

In November 2000, Port and AMB Property, L.P., entered into a First Amendment to the Master Lease to make revisions regarding historic tax credits, participation in sale proceeds and Port Sublease rent ("First Amendment"). The Port Sublease commenced on February 1, 2001 and expires on the Expiration Date (August 2, 2049).

With Port's consent, AMB Property, L.P. assigned its entire interest in the Master Lease to AMB Pier One LLC, a California limited liability company ("AMB Pier One" or "Tenant") pursuant to that certain Assignment and Assumption Agreement dated November 17, 2000. With Port's consent, AMB Pier One then entered into a sublease with AMB Property, L.P. commencing on December 11, 2000 and expiring on December 10, 2020 (subject to extension options) for AMB Property, L.P.'s sublease of certain portions of the Master Premises (now, the "Prologis Sublease").

On June 3, 2011, AMB Property Corporation, a Maryland corporation, merged Prologis, a Maryland real estate investment trust, with the surviving entity AMB Property Corporation changing its name to Prologis, Inc., and its operating company AMB Property, L.P. changing its name to Prologis, L.P., a Delaware limited partnership. As a result, AMB Pier One continues to be a wholly-owned subsidiary of Prologis, L.P. Prologis, L.P., formerly known as AMB Property, L.P., is sometimes hereinafter referred to as "Prologis."

III. TERMS

Option to Extend Term of Master Lease

Option to Extend: Port grants to Tenant an option for one (1) additional fifteen (15) year extended term for the Premises only commencing upon the date following the Expiration Date (August 2, 2049) and expiring on August 1, 2064. Tenant may exercise the Extension Option no earlier than 48 months prior to the Expiration Date and no later than 24 months prior to the Expiration Date (between 2045 and 2047). Tenant's exercise of the Extension Option shall be non-revocable. There shall be no additional options to extend the Term.

Extension Term Rent: The Minimum Rent for the Extension Term shall be adjusted to equal the then Fair Market Value based upon the market rental rate for comparable land in comparable locations along the San Francisco waterfront and in downtown San Francisco.

In the event Port and Tenant are unable to mutually agree on the Extension Term Minimum Rent within 30 days, then the Extension Term Minimum Rent shall be set by the appraisal process. In no event will the Extension Term Minimum Rent be less than the Minimum Rent in effect as of the original Expiration Date (\$1,341,543 annually).

Default: If any Event of Default by Tenant is outstanding at the time of the Extension Option and remains uncured after notice and the expiration of all applicable cure periods or the obligations required by the Second Amendment have not been fulfilled to Port's satisfaction in its sole discretion, then Port may elect to reject Tenant's exercise of the Extension Option.

Entire Premises: The lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of the current Lease.

Port Sublease

Right to Terminate: In a separate First Amendment to the Sublease, Port shall have a one-time option to terminate its sublease as of February 1, 2031 by providing written notice by no later than August 1, 2029. There shall be no fee or penalty if the Port exercises its option to terminate.

Option to Extend: Port shall have an Option to Extend its sublease term for an additional 15 years to coincide with the commencement and expiration of the Master Lease extension term. Port shall provide written notice of its intent to extend its term within 12 months after Tenant has provided written notice exercising its Extension Term. Port's Extension Term rent shall be calculated at the then prevailing fair market value.

Prologis Sublease Term and Rent

Sublease term: The first and second option terms will be eliminated and the term of the current Prologis Sublease will be extended to February 1, 2041. Prologis shall retain the existing extension option commencing on February 2, 2041 and expiring on the Expiration Date of the Master Lease (August 1, 2049). Rent for the period between the original expiration date of the Prologis Sublease (February 1, 2021) and the new expiration date (February 1, 2041) shall be determined at fair market value.

Option to Extend: Prologis may also be granted an additional extension option for up to 15 years to be coterminous with the AMB Pier One 15-year extension option provided by this Second Amendment. If AMB Pier One offers an extension option, it must be personal to Prologis, or its "affiliate" as that term is defined in the Master Lease, and not otherwise assignable. Prologis's rent during the extension term, if any, would be at fair market value.

Right to Terminate: Prologis current right to terminate will be eliminated.

Improvements: No later than 5 years from the Second Amendment Commencement Date (by 2021) Prologis agrees to invest a minimum of \$10 million for the renovation of Bay 1A of which at least \$2 million will be dedicated to core and shell upgrades to Pier One ("Subtenant Improvements").

At a minimum, the Prologis Improvements must include: improvements to the central plant, which will serve the entire building; increased restroom capacity and core plumbing; and replacement of major components of the existing HVAC system to achieve a more functional, efficient, cost effective and environmentally sustainable system. The Improvements shall be constructed at no cost to Port. Prologis understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any improvements discussed above and agrees that it will not seek additional term for the purpose of amortizing the improvements.

Pier One is individually listed on the National Register of Historic Places and is a contributing resource within the Embarcadero Historic District. Port Commission Resolution 04-89 adopted in 2006 when the historic district was approved requires interior and exterior alterations and construction within the district to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the Port's design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures. Because the design information has yet to be developed for the proposed HVAC system upgrades/replacement, this work will be reviewed for consistency in the near future when Prologis has provided technical and design information for Port review.

Participation Rent: Tenant shall pay to the Port a minimum guaranteed Participation Rent for Bay 1B, consisting of approximately 11,000 square feet, of \$500,000 over 4 years in equal quarterly installments of \$31,250 each. The \$500,000 payment is not subject to any set off, adjustment or deduction.

IV. SEA LEVEL RISE

Pier Flood Protection Measures: In addition to Tenant's obligations in the Lease to comply with Laws and to repair and maintain the Premises, (including, but not limited to, the Bulkhead and Substructure, pier, pier apron, the Public Access Area and all other Improvements) if, at any time during the term of the Lease, and subject to compliance with the California Environmental Quality Act ("CEQA"), the Chief Harbor Engineer (CHE) determines in his or her regulatory capacity in accordance with applicable Laws that there is a need to institute Flood Protection Measures at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety ("CHE Determination"), Tenant shall be responsible at no cost to Port, for permitting, constructing and implementing any such Pier Flood Protection Measures. Tenant may be eligible for Core and Shell Improvements during the Extension Term as deductions in the determination of net income for the purposes of calculating participation rent, but otherwise no other compensation or consideration for any Pier Flood Protection Measures will be provided including any additional lease term. Pier Flood Protection Measures may include, without limitation: (1) temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with wave overtopping of the pier apron; (2) waterproofing or relocation of utility infrastructure from underneath the pier to minimize the risk of water or wastewater discharges to San Francisco Bay; and/or (3) short perimeter flood walls.

At any time during the Term or the Extension Term, Port or Tenant may propose improvements, at Tenant's cost, that (i) are not within the scope of the potential Pier Flood Protection Measures, such as raising first floor elevations or rebuilding pier structure or Substructure elements to address sea level rise; and (ii) are not otherwise Tenant's obligation under the Master Lease, in order to preserve or enhance the value or useful life of the Premises. If Port approves such improvements and the improvements cannot be amortized over the remaining original term and subject to Port's consent in its reasonable discretion, then, Tenant may exercise its Extension Option at the time of Port's approval prior to 2045 and which shall not exceed the extension option period of 15 years (2064). Additional permitting and approvals may be required, as well as possible additional environmental review.

V. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed two amendments (including the proposed interior alterations) do not change or intensify the use of Pier One and do not qualify a project subject to CEQA review. The proposed interior alterations have been evaluated by a qualified historic expert confirmed by Port staff that the improvements would comply with the Secretary of the Interior Standards for Historic Rehabilitation.

RECOMMENDATION:

Port staff recommends the Port Commission approve the attached Resolution approving: (1) a Second Amendment to Lease L-12838 with AMB Pier One, LLC and (2) a First Amendment to the Port Sublease for Pier One to grant Port a concurrent 15-year option, both subject to Board of Supervisors' approval.

Prepared by: Jay Edwards
Senior Property Manager

Prepared for: Susan Reynolds
Deputy Director Real Estate

PORT COMMISSION

CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 16-07

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and

WHEREAS, in January 1998, in conjunction with the overall program of harbor development for the Ferry Building Area, the Port issued a Request for Interest and Qualifications to master lease and develop Pier One as a maritime office project; the Port Commission by Resolution 98-49 awarded the opportunity to AMB Property Corporation in part due to its commitment to occupy the building as project manager and co-tenant which would motivate it to complete a high quality historic renovation in a timely fashion; and

WHEREAS, on March 9, 1999, through Resolution 99-17, the Port Commission approved the terms of the Pier One Development Agreement and a fifty (50) year lease with AMB Property Corporation (Master Lease) which included, among other terms: a sublease to the Port for a term coterminous with the term of the Master Lease including expansion and purchase options (Port Sublease); significant investment in rehabilitation of the pier and seismic upgrades to preserve the historic pier; obligations to maintain and repair the substructure and seawall beneath the pier; creation of public access, office space and casual dining opportunity; support of maritime commerce in the form of high quality maritime office space for the Port and other maritime businesses; and related economic terms including use of historic tax credits and payment of minimum rent (without any adjustment or escalations during the term) and participation rent (collectively, the Project); and

WHEREAS, in May 1999, through Resolution 329-99, the Board of Supervisors approved the Pier One Development Agreement, Master Lease and Port Sublease; and

WHEREAS, the Master Lease with AMB Property L.P. (Lease No. L-12838) commenced on August 2, 1999; the Port Sublease commenced on February 1, 2001; and both will expire on August 2, 2049; and

WHEREAS, the State Lands Commission and the Port Commission determined that the Project was compliant with the Public Trust and Burton Act obligations based on factors including that the Project (1) was for a term of less than sixty-six (66) years; (2) was necessary to preserve a maritime resource through the reconstruction and repair of the historically significant Pier 1 bulkhead building and shed in furtherance of the policies and objectives of the Waterfront Land Use Plan; (3) was consistent with trust requirements for commerce and navigation; (4) provided significant public access to the Bay and visitor serving amenities; (5) conserved Port revenue to subsidize other maritime uses and public improvements for which private investment would not be economic; and (6) requires ongoing efforts to attract maritime office users through a Maritime Marketing Program; and

WHEREAS, in November 2000, AMB Property L.P. assigned its rights under the Master Lease to AMB Pier One LLC (Tenant) and the AMB entities entered into a lease back arrangement with AMB Property L.P. (now Prologis) becoming the subtenant under a sublease expiring on December 10, 2020 (subject to several extension options) (Prologis Sublease); and

WHEREAS, Tenant fully performed on the Development Agreement and the Chief Harbor Engineer (CHE) issued a Certificate of Completion for the pier rehabilitation in November 7, 2002; and

WHEREAS, Tenant has proposed one (1) extension term at Tenant's sole option for an additional fifteen (15) year term until August 1, 2064 upon the expiration of the Master Lease in 2049 (Extension Option) in the form of a Second Amendment to the Master Lease (Second Amendment); and

WHEREAS, as material consideration for the Extension Option, Tenant has agreed to the following through the Second Amendment to the Master Lease, amendment to the Prologis Sublease and First Amendment to the Port Sublease; which provide substantial benefits to the Port:

A. Master Lease Second Amendment:

(i) Guarantee an additional \$500,000 in participation rent to the Port by requiring Prologis to consolidate its subleased premises and putting additional sublease space on the market now to take advantage of favorable current market rates;

(ii) Agree to permit and implement, at its cost, certain sea level rise protection measures if required by the CHE to protect health and safety;

(iii) Agree to termination of the Master Lease without cost or liability to Port should the CHE determine that there is an ongoing threat to human health and safety due to sea level rise;

(iv) Agree to consider implementing more extraordinary flood protection measures such as raising the deck level in return for early exercise of the extension option and subject to project feasibility;

(v) Remain responsible for all leasing, management and capital required to maintain the premises during the extension term;

(vi) Agree to pay fair market value minimum rent during the extension term, including automatic escalators and in no event less than the current minimum rent;

(vii) Continue to pay 50% participation rent of all sublease net income; and

(vii) Comply with current City requirements;

B. Prologis Sublease Amendment:

(i) Extend Prologis's current sublease due to expire in 2021, for an additional 20-year term until 2040, eliminate Prologis's right to terminate and add an additional option to renew the sublease subject to Tenant's exercise of the Master Lease extension option;

(ii) By 2021, invest \$10 -12 million in capital for Prologis' Pier One world headquarters sublease premises; and

(iii) Comply with the current City requirements;

C. Port Sublease:

(i) Grant the Port a one-time early termination right in 2031, for any reason, and if not exercised, grant the Port a 15-year extension option in the event Tenant exercises the Master Lease extension; and

WHEREAS, all other terms of the Master Lease will remain in effect; and

WHEREAS, the terms of the Second Amendment are consistent with the Port's initial intent to have the tenant committed to occupancy and with the Public Trust, Burton Act and Waterfront Land Use Plan since the original Master Lease term of 50 years combined with the potential Extension Option of 15 years does not exceed the maximum term of 66 years and all other uses and conditions of trust consistency remain unchanged; and now therefore be it

RESOLVED, that the Port Commission confirms that the Project continues to provide substantial benefits to the Port which will be extended and augmented by an additional 15 years under the terms and conditions described in this Resolution and the Memorandum dated February 4, 2016; and that the Project continues to be trust consistent and consistent with the Waterfront Land Use Plan; and be it further

RESOLVED, that, subject to Board of Supervisors' approval, the Port Commission approves the Second Amendment to the Master Lease and the First Amendment to the Port Sublease and authorizes the Executive Director or her designee to execute such amendments in substantially the same form on file with the Port Commission Secretary; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Master Lease including the Second Amendment or Port Sublease including the First Amendment that the Executive Director, in consultation with the City Attorney, determines to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 9, 2016.



Secretary

